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STATE BANKS AND TRUST COMPANIES Since the Passage of the National-Bank Act

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PREFACE.

In the preparation of Part I of the following work—State-Bank and Trust-Company Legislation—I have been much aided by the admirable Digest of the State Banking Statutes made by Mr. Samuel A. Welldon for the National Monetary Commission. The legislation is covered in Mr. Welldon's digest through 1909; and in a few states, where the published laws were accessible early in 1910, I have taken account also of the laws enacted at the legislative sessions of 1910.

The bank deposit guaranty laws recently enacted in certain States have not been included in the discussion, since these laws and their effect have been fully dealt with by Mr. Thornton Cooke in an essay, originally published in the Quarterly Journal of Economics, which is reprinted in connection herewith (Appendix B).

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Part I

State Bank and Trust Company Legislation

STATE BANK AND TRUST COMPANY LEGISLATION.

INTRODUCTION.

The banking institutions of the United States other than national banks are ordinarily classified into (*a*) state banks, (*b*) trust companies, (*c*) stock savings banks, (*d*) mutual savings banks, and (*e*) private banks. The following pages deal with two of these classes, viz, state banks and trust companies. It will be desirable at the outset to distinguish them from the other classes, and to outline the history of legislation concerning them since 1865.

STATE BANKS.

The term "state bank" has been used in the United States in several different senses; but whatever the variance in meaning, such banks have always had one common characteristic—incorporation under state authority. "A state bank," says Morse, "is one organized under a state law or charter granted by the legislature of a State and derives its power from state sovereignty."[a] In the bank reports of some of the States, private banks are not distinguished from state banks. This is due to the fact that in these States incorporated and unincorporated banks are subject to the same regulation. A private bank, however,

[a] Morse on Banks and Banking, 3d ed., sec. 16.

is an unincorporated bank. The definition given in the Utah statutes correctly represents present usage:

Private bankers are those who, without being incorporated, carry on the business of banking.

Not all banking institutions incorporated by the States are state banks. Mutual savings banks, stock savings banks, and trust companies are also corporations organized under state laws or charters granted by state legislatures. The distinction between mutual savings banks and state banks is clear. Mutual savings banks do not have a capital stock and do not carry on a discount and deposit business—i. e., they do not discount commercial paper, and do not receive demand deposits payable on check. State banks, on the other hand, have a capital stock and carry on a discount and deposit business. Many state banks, however, receive also savings deposits. The line of demarcation between state banks and stock savings banks is much less definitely marked. Both state banks and stock savings banks have a capital stock. Stock savings banks are primarily savings banks, and many of them do not do a discount and deposit business, but confine themselves to the savings bank business. But in several States the distinction between state banks and stock savings banks is of the most unsubstantial character, since the stock savings banks carry on the business of a commercial bank, receiving demand deposits payable on check, and discounting commercial paper. Finally, the distinction between state banks and trust companies is not exactly the same in any two of the States. It can therefore be stated more clearly later, after some consideration of the development of the banking powers of the trust company.

"State banks," then, as the term is used in the following pages, are banks of discount and deposit (as distinguished from savings banks, mutual and stock) incorporated by one of the States or Territories (in contrast with private banks, which are unincorporated, and with national banks, which are organized under the national-bank act).

In 1860 there were in the United States 1,562 state banks. Owing to the repressive influence of the national-bank act, hastened in its effect by the 10 per cent tax on state-bank notes, the number of state banks had by 1868 fallen to 247. One result of this decline in the number and importance of state banks was the cessation of state banking legislation. The old laws regulating state banks of issue were swept away by code revisions, or remained obsolete and unchanged on the statute books.

The number of state banks began to increase about 1870. In a few States old banking laws intended for the regulation of banks of issue hampered their development, but in the remaining States they were left for a considerable period almost entirely without regulation. As late as 1892, in his digest of the state statute law, Mr. Stimson said:

> It seems unnecessary to incorporate the state banking laws in this edition. Nearly all the States, except the newer States and Territories, have special chapters in their corporation acts concerning banks and moneyed institutions, but these chapters are usually of old date, and have practically been superseded for so long a time by the national banking laws that they have become obsolete in use and form.[a]

The increasing attention paid in recent years by the state legislatures to the regulation of the state banks has been partly due to the rapid growth of the banks in num-

[a] American Statute Law, Vol. II, sec. 9500, p. 572.

bers and in financial importance; but it is to be accounted for primarily by a change of view as to the purpose of banking regulation. The antebellum state-bank regulations were intended to secure the safety of the bank note. Although the depositor was protected by many of the regulations, this protection was purely incidental. The view that note-issuing banks alone required governmental regulation persisted for a considerable time after the passage of the national-bank act. Since the national banks had a monopoly of the issue of bank notes, the regulation of state banks was considered needless. As the importance of note issue as a banking function decreased, banking regulation, as seen in the national-bank act, began to be considered desirable as a protection to depositors.

TRUST COMPANIES.

The powers of the state bank were already well defined before the increase in state banking legislation noted above, and that legislation has not had as one of its important purposes the marking out of the functions of the state bank. With the exception of the power to issue notes, which would be unavailable because of the tax on note issue, the powers of the state banks of to-day are essentially the same as the powers of the state banks which were in operation before the civil war. On the other hand, the trust company is a new type of banking institution, the functions of which are even yet not clearly defined.[a] A

[a] Excellent detailed accounts of the history of the early trust-company movement may be found in "Trust Companies in the United States," by George Cator, and in "Trust Companies," by Clay Herrick. The present writer wishes to express his indebtedness to both of these works.

great part of the legislation with reference to trust companies, therefore, has had to do with defining the powers of these corporations.

The early laws for the incorporation of trust companies show the widest differences of opinion with regard to their field of operation. The one point of agreement appears to have been the idea that a corporation could administer trusts more advantageously and safely than an individual. But the companies in all the States were given additional powers more or less closely connected with their trust powers. Some of the companies, chiefly the very early ones, were empowered to insure lives and to grant annuities. In a considerable number of states the companies were authorized to insure the fidelity of persons in positions of trust and in some States to insure titles to land.[a] Almost all the companies were empowered to do a safe-deposit business. Among these powers there was a certain apparent connection. The power to insure the fidelity of trustees, administrators, and executors seemed a natural addition to the powers of a company which might act in such capacities. Similarly, it appeared that the business of insuring titles to land was one which could be most economically conducted by a corporation which, in its capacity of trustee, would be a large owner of real estate.

[a] Of such kind were the general laws for the incorporation of trust companies, enacted in Colorado in 1891, in Idaho in 1901, in Kansas in 1901, in Missouri in 1885, in Montana in 1887, in New Mexico in 1903, in North Dakota in 1897, in Oklahoma in 1901, in Pennsylvania in 1881 and in 1895, in Tennessee in 1883, in Texas in 1891, in Utah in 1890, in West Virginia in 1891, in Wisconsin in 1883. Many of the early charters in Connecticut, Maryland, and Delaware conferred similar powers.

One other power was given to practically all the companies—the power to receive deposits of money in trust. The following quotation from the Report of the Massachusetts Commissioners of Savings Banks for 1871 shows the use which it was expected would be made of this power:

> The trust company in Worcester and the New England Trust Company in Boston, both in successful operation, are the first of such corporations established in this State. They were incorporated after a very careful investigation by the legislature, with power to hold money in trust, and so restricted in making loans and investments as to afford the safety which the character of their business requires. A similar institution will soon be organized in Northampton, and others are contemplated. They are well calculated to promote public interests by affording to the owners of capital not engaged in business many of the advantages secured by our savings-bank system for the savings of labor.

The development of the trust company as reflected in the legislation with reference to its powers shows two main tendencies: (1) The companies have to a very large extent given up the insuring of the fidelity of persons in positions of trust and the guaranteeing of land titles. (2) They have largely increased their banking activities.

1. In some States which formerly authorized trust companies to insure the fidelity of persons in positions of trust, or to guarantee titles to real estate, the more recent laws do not permit the combination of such business with the business of a trust company. In Connecticut, for example, trust companies were forbidden by a law passed in 1907 to engage in any kind of insurance business, except that companies doing a title-guaranty business might continue. In West Virginia the trust-company act of 1903 does not permit trust companies formed under it to do a fidelity

and guaranty business. The Texas trust-company law of 1905 similarly withholds from trust companies the power to do a bonding business. Even in those States, notably Missouri and Pennsylvania, in which trust companies are permitted to do a fidelity business, only a few of the companies avail themselves of the power to carry on such business.

The fidelity insurance business during the past twenty years has been largely concentrated in the hands of a comparatively small number of companies which have agencies in all parts of the country and which do not undertake a trust or banking business. The elimination of fidelity insurance from the functions of the trust company has not been chiefly or even largely due to adverse legislation, but to the nature of the fidelity insurance business.[a] The most successful conduct of that business appears to require, like other kinds of insurance, that the risks shall be numerous and widely distributed. These conditions are best met by companies which carry on business in many different places.

For the most economical conduct of the title insurance business an expensive plant is necessary. The business in each city tends therefore to fall into the hands of a single company, which ordinarily finds it profitable to devote itself entirely to the one kind of business. At the present time, only a very small part of the trust companies in the United States insure titles to land.

[a] There has, however, been some opposition to the same corporation carrying on both a trust and a fidelity business. In several of his reports, the Pennsylvania commissioner of banking has recommended the separation of the fidelity business from the trustee and banking business of the Pennsylvania trust companies.

2. The second great tendency in the development of the powers of the trust company—the enlargement of its banking powers—has also been primarily an economic development and not one due to legislative design. As has already been noted, the early trust companies ordinarily had power to receive trust deposits and to loan money. Some such powers were necessary for the exercise of their trust functions. The opportunity to enlarge the banking powers of the companies lay in the difficulty of distinguishing clearly between the powers which it was intended to confer upon the trust companies and the banking powers possessed by state and national banks.

In the greater number of the States the wording of the sections conferring powers to do a trust business was such that the trust companies were either held by the courts to be empowered to do a banking business or, if the power to do such business seemed not to be granted, were able by some change in the method of doing the kind of banking business in question to bring it within the powers actually conferred. In Missouri, for instance, since 1885 trust companies have been empowered to "receive money in trust and to accumulate the same at such rate as may be obtained or agreed upon or to allow such interest thereon as may be agreed." The supreme court of Missouri in construing the power thereby conferred has held that a trust company can take only interest-bearing deposits, but that such deposits may be demand deposits payable on check.[a] The rate of interest may, however, be nominal.

[a] State *v.* Lincoln Trust Company (144 Mo., 562).

In other States the trust companies have attained legal recognition of their banking powers by slow steps. The history of the Pennsylvania trust companies affords an illustration. In the Pennsylvania general corporation act of 1874 no provision was made for the formation of trust companies, but provision was made for the incorporation of title-insurance companies. By an amendment to the corporation act in 1881 title-insurance companies with a capital of at least $250,000 were given trust and fidelity-insurance powers; but it was expressly provided that such companies were not authorized thereby to do a banking business. In 1885 the trust companies were given the power to receive upon deposit for safe-keeping valuable property of every description, and in 1895 trust companies were given power to "receive deposits of money and other personal property and to issue their obligations therefor * * * and to loan money on real and personal securities." In 1900 the United States circuit court of Pennsylvania decided that Pennsylvania trust companies might legally receive demand as well as time deposits.[a] Pennsylvania trust companies apparently even now can not discount commercial paper, but they may loan on it as collateral and may purchase it from the holder. In his report for 1906 the Pennsylvania commissioner of banking said:

> Since a trust company is not a bank of discount and can not do a banking business, I have to recommend that an act be passed providing that such a company shall not permit its money to be loaned except on collateral.

The States in which the banking powers of the trust companies have been most narrowly restricted are Iowa,

[a] Bank of Saginaw *v.* Title and Trust Company (105 Fed. R., 491).

Michigan, Nebraska, and Wisconsin. In Nebraska a trust company can not do a banking business. In Iowa trust companies can not do a banking business except that they may receive time deposits and issue drafts on their depositories. In Michigan trust companies are expressly forbidden to do "a general banking business." The Michigan commissioner of banking in his report for 1906 complained, however, that the law was not clear as to the banking powers of the companies. In Minnesota the trust companies may receive trust deposits, but may not "engage in any banking business except such as is expressly authorized for such a corporation." In Wisconsin the extent of the power of trust companies to receive deposits was much debated until 1909, when the legislature provided for the incorporation of "trust-company banks," which have power to receive time and savings deposits, but do not have power to receive deposits subject to check.

The result of the two tendencies described above—the elimination of the insurance powers of the trust company and the addition of banking powers—has gradually standardized the powers of the trust company, until at the present time the trust company, as it appears in the corporation laws of most of the States, may be fairly well defined as a bank which has power to act in the capacity of trustee, administrator, guardian, or executor.[a]

In a number of States the legislation concerning trust companies deals with them explicitly from this stand-

[a] There are differences among the state laws with respect to the trust powers which trust companies may exercise. The present monograph deals, however, with the trust company only in so far as it has banking powers.

point. The Illinois bank act of 1887 provided that any bank might have power to execute trusts by complying with the trust-company law. In Alabama and Tennessee any state bank may be appointed and may act as an executor, administrator, receiver, or guardian. In Mississippi any bank with a paid-up capital of $100,000 may do a trust-company business. In Georgia any trust company may acquire banking powers by complying with the laws regulating banks. In Texas banks may acquire trust-company powers. The same tendency is shown in the important banking laws enacted in Ohio in 1905 and California in 1909.[a]

The gradual change from the view that the trust company is an institution of markedly different character from the ordinary bank of discount and deposit to the view that the trust company is merely a bank exercising functions additional to those exercised by the majority of banks has been the chief influence in determining the form of the legal regulations imposed upon trust companies. As long as the older view obtained, the regulations concerning trust companies were widely different from those imposed upon banks; but as the trust company has increased both the scope and amount of its banking business, the regulation of the banking business

[a] One result of this development is great confusion in the use of the terms "trust company" and "bank." In Massachusetts, for instance, the legislature has not seen fit to incorporate state banks, but does incorporate trust companies. A trust company, however, must be specially authorized to do a trust-company business, and more than half of the so-called "trust companies" do only a banking business. In Alabama, on the other hand, any bank may do a trust business, and all the banks, whether doing a trust business or not, are classified in the report of the state treasurer as state banks.

of the trust company has tended to become assimilated to the regulations imposed upon state banks.

In some States the assimilation is complete, but in the majority of the States there remain considerable differences. In some cases these are mere historical survivals; but in others they reflect differences still existing, even where the banking powers of banks and trust companies are essentially the same, in the character of the banking business actually done by the state banks and by the trust companies. There is difficulty, however, in drawing up different regulations properly applicable to each class, since, even in those States where the banking business of the trust companies taken as a whole is different from that of the banks, particular banks and particular trust companies do essentially the same kind of banking business. There has recently been a strong tendency in the state legislation to make the provisions of the banking law apply not to banks or trust companies as such but to certain classes of business, whether carried on by banks or by trust companies. In his report for 1907 the New York superintendent of banks strongly advocated this policy. He said:

An injustice would be done were we to deal with all financial institutions in accordance with the names under which they operate rather than with reference to the character of business in which they are actually engaged. In short, if the commercial bank or trust company is actually doing a savings bank business, whatever it may be called, its deposits of that character should be protected by such safeguards as the legislature has thought proper to apply to the legitimate savings bank business. In the same way, if a trust company is doing a commercial business, all interests should be protected through those reserves which sound banking principles require. If a commercial bank is doing a trust business, this business in turn should be protected by proper safeguards.

The California bank act of 1909 contains the most complete application of the policy of disregarding the old line of distinction between the state bank and the trust company and basing the regulation of the banking business on the character of the business. Under this act banks are divided into commercial banks, savings banks, and trust companies. Any bank may carry on any or all of the three classes of business, but each kind of business must be kept separate and distinct, and the regulations apply specifically to each department. The regulations, for instance, concerning the reserve to be held against demand deposits are the same whether the deposits are in a bank which has only a commercial department or whether they are in a bank which combines all three departments.

The laws enacted in several States with reference to the treatment of savings deposits also illustrate the same tendency. In practically all the States and Territories, some at least of the state banks and trust companies receive such deposits.[a] Until recently savings depositors in these institutions were on the same footing as other depositors.[b] If the bank failed, they shared in the assets with other depositors. In 1891 the New Hampshire legislature enacted a law which applied to savings deposits in trust companies the principles which had been

[a] See below, p. 228.

[b] In fact, the savings depositor was in one way at a disadvantage, for a bank in danger of insolvency might refuse to allow the withdrawal of its savings deposits except after sixty or ninety days' notice. In the meantime, the other depositors might withdraw their deposits or a considerable part of them, leaving the savings depositors to bear the burden of the failure. See Proceedings of the Eighth Annual Convention of the National Association of Supervisors of State Banks, p. 55.

worked out through the experience of many years for mutual savings banks. The savings deposits were to be segregated and held in a separate department and were to be invested only in the securities in which it was permissible for mutual savings banks to invest their funds. In the event of the insolvency of the bank, the assets of the savings department were to be used in paying the savings depositors. In 1899 the Michigan bank act, which already provided for the investment of savings deposits in specified securities, was amended so as to provide that "all the investments relating to the savings department shall be kept entirely separate and apart from the other investments of the bank." The supreme court of Michigan in interpreting this provision said:

> So long as it is entirely possible to trace the fund which was invested in these securities as a fund derived from the savings department, we think there is no difficulty in saying that it should be impressed with a trust in favor of the savings depositors.[a]

In order to make certain that such funds should be traceable, the legislature of Michigan provided, in 1909, for the imposition of a fine on any bank combining commercial and savings banking which did not keep separate accounts and investments. Legislation similar to that in New Hampshire and Michigan was enacted in Connecticut in 1907, in Massachusetts and Rhode Island in 1908, and in California and Texas in 1909.

[a] Peters *v.* Union Trust Co. (131 Mich., 322)

CHAPTER I.

INCORPORATION.

The power to charter banking as well as other corporations is inherent in the state legislatures and is limited only by constitutional provisions. The constitutions of several States, at one time or another, have prohibited the granting of charters for banking purposes, but in the period since 1865 in only one State has the legislature been so restrained from chartering banks that do not have the privilege of note issue.[a] The Texas constitution of 1876 provided:

No corporate body shall hereafter be created, renewed, or extended with banking or discounting privileges.[b]

The legislature of Texas in 1903, however, provided for the submission to popular vote of an amendment to the

[a] It has sometimes been stated that the constitution of Oregon prohibits the incorporation of banks, and Article XI, section 1, of its constitution seems capable of this construction, but the supreme court of Oregon, in the case of State ex rel. *v.* Hibernian Savings Bank (8 Or., 396), after an examination of the Journal of the Constitutional Convention, held that only the chartering of banks of issue was prohibited. There are provisions prohibiting the legislature from incorporating banks of issue in several other state constitutions now in force.

[b] Constitution of Texas, Article XVI, section 16. The policy of Texas, from the beginning of its history as a State, has been almost constantly opposed to the chartering of banking corporations. The constitutions of 1845, 1861, and 1866 contain the clause cited above. The constitution of 1868 did not prohibit the granting of bank charters, and a few banks were incorporated from 1868 to 1876.

constitution authorizing the incorporation of banks.[a] This amendment was adopted in November, 1904, and in 1905 a general banking law was enacted under which banks might be incorporated. At the present time, therefore, the legislatures in all the States may charter corporations with banking powers.

There are, however, in several of the state constitutions provisions which limit the power of the legislature to incorporate banks. From 1846 to 1859 the principle of the referendum was applied to banking charters in nearly all the States of the Middle West. Wisconsin, Illinois, Michigan, Ohio, Iowa, and Kansas in quick succession inserted in their constitutions provisions requiring banking laws to be submitted to popular vote for ratification.[b] In 1875 the same provision was adopted in Missouri.[c] In Kansas, Iowa, and Ohio the courts have held that these provisions apply only to banks of issue and that legislative acts incorporating banks of discount and deposit need not be submitted to vote.[d] In Missouri the words of the provision explicitly restrict its application to banks of issue. Only in three States—Michigan, Illi-

[a] The text of the amendment in so far as it relates to the power of the legislature to incorporate banks is as follows: "The legislature shall by general laws authorize the incorporation of corporate bodies with banking and discounting privileges."

[b] Iowa (1857), Art. VIII, sec. 5; Wis. (1848), Art. XI, secs, 4, 5; Mich. (1850), Art. XV, sec. 2, amended in 1861 (Laws of 1861, p. 589); Ill. (1848), Art. X, sec. 5; Ohio (1851), Art. XIII, sec. 7; Kansas (1857), Art. XII, sec. 5, and (1859), Art. XIII, sec. 8.

[c] Constitution of Missouri (1875), Art. XII, sec. 26.

[d] Decisions holding referendum provisions applicable only to banks of issue: Kansas, Pape *v.* Capitol Bank (20 Kans., 440); Iowa, State ex rel. *v.* Union Stock Yards State Bank (70 N. W., 752); Ohio, Dearborn *v.* Northwestern Savings Bank (42 O. S., 617).

nois, and Wisconsin—have these provisions affected the power of the legislature to charter banks without the privilege of note issue. Only the general banking law was subject to popular sanction in Michigan,[a] but in Wisconsin[b] and Illinois[c] every amendment of the banking law was to be so ratified. These provisions were intended to provide against conditions which no longer exist, and, whatever their value may have been as a protection against the evil of an overissue of bank notes, their only effect since 1865 has been to render the adaptation of the banking laws to the changed needs of the present day slow and difficult. In 1902 a constitutional amendment giving the legislature full power to enact banking laws was adopted in Wisconsin, and in 1908 the referendum requirement was omitted from the constitution adopted in that year in Michigan. In Illinois all laws relating to banking corporations must still be submitted to popular vote.

A second restriction on the power of the legislatures to create and regulate banking corporations is the provision found in several state constitutions requiring a two-thirds vote of the legislature for the enactment of banking laws.

[a] The provision in the Michigan constitution of 1850 required not only that every "banking law or law for banking purposes," but also that amendments to such laws, should be submitted. By a constitutional amendment adopted in 1862 the provision was altered so that only the "general banking law" need be approved by popular vote.

[b] Rusk *v.* Van Nostrand (21 Wis., 159), Van Steenwyck *v.* Sackett (17 Wis., 645); In re Koetting (90 Wis., 166, 169).

[c] It was held in People *v.* Loewenthal (93 Ill., 191) that the referendum clause in the constitution of 1848 applied only to banks of issue. The constitution adopted in 1870 explicitly extended the principle to all incorporated banks. (Reed *v.* People, 125 Ill., 592.)

This provision is contained in the constitution of Minnesota, adopted in 1857; it was substituted for the referendum requirement in Wisconsin in 1902, and it was inserted in the constitution of Michigan adopted in 1908.

The third and most important restriction relates to the method of incorporation. The legislatures, in the absence of constitutional provisions, may incorporate banks either by special acts or under a general law. Throughout the period since 1865, there has been a gradual increase in the use of general laws at the expense of special charters. It is needless to say that this movement has not been confined to banking corporations. In fact, banking has been somewhat later than other business pursuits to receive freedom of incorporation. Charters of every kind were at first granted in all of the thirteen original States only by special acts. Early in the nineteenth century the substitution of general laws for special charters in some kinds of business became common in the New England and Eastern States;[a] but the enactment of general laws for the incorporation of banks was delayed.[b] In his report for 1849, Hon. Millard Fillmore, comptroller of the State of New York, thus described the circumstances which led to the passage of the general law for the incorporation of banks in that State:

The practice of granting exclusive privileges to particular individuals invited competition for these legislative favors. They were soon regarded as a part of the spoils belonging to the victorious party and were dealt

[a] "Political Essays," by Simeon E. Baldwin, p. 119.

[b] For general treatment of the antebellum movement toward general incorporation laws for banks, see "Philosophy of the History of Bank Currency in the United States," by Theodore Gilman, Bankers' Magazine, vol. 50, p. 347.

out as rewards for partisan services. This practice became so shameless and corrupt that it could be endured no longer; and in 1838 the legislature sought a remedy in the general banking law.

According to the provisions of the constitution of New York adopted in 1846, charters were to be granted under general laws, "except where in the judgment of the legislature the objects of the corporation can not be attained under general laws;"[a] but the desirability of incorporating banks by special charters was not left to the discretion of the legislature; they were in all cases to be formed under general laws.[b]

The States of the Middle West for the most part followed the lead of New York,[c] and adopted the policy of "freedom of incorporation." [d] In several of them, the constitution permitted also the establishment of a state bank with branches. With the extinguishment of the state bank currency, however, incorporation under the general law in all these states, except Illinois, became

[a] Constitution of New York (1846), Art. VIII, sec. 1.

[b] Constitution of New York (1846), Art. VIII, sec. 4. See, however, below, p. 30.

[c] It was the introduction of the bond deposit as a means of securing the safety of bank notes which made practicable the incorporation of banks of issue under a general law. Michigan in 1837 had inaugurated a system of "free" banks with a circulation based on real estate. See "Banking in Michigan," by Alpheus Felch. Senate Ex. Doc. 38, pt. 1, 52 Cong., 2d sess.

[d] Provisions forbidding incorporation by special act were introduced into the constitutions of these States as follows: Mich. (1850), Art. XV, sec. 1; Ind. (1851), Art. XI, secs. 2, 4, 13; Ohio (1851), Art. XIII, sec. 1; Wis. (1848), Art. XI, secs. 1, 4, 5; Iowa (1846), Art. VIII, sec. 1, and (1857) Art. VIII, sec. 1; Mo. (1865), Art. VIII, sec. 4, and (1875), Art. XII, sec. 2; Minn. amdt., (1881), Art. X, sec. 2. In Wisconsin the legislature was empowered to grant bank charters, but such grants were to be submitted to popular vote. This provision made the use of the special act as a method of incorporation impracticable.

the sole method of incorporating banks. In Illinois special charters for banking corporations were granted until 1870. The constitution adopted in that year, however, required that all corporations should be formed under general laws.[a] The policy of requiring that corporations be chartered only under general laws became the rule also in the newer States of the West, and as each new State was added to the Union it placed in its constitution provisions prohibiting the formation by special act either of all corporations or of certain classes of corporations.[b] In all of these States banks are now incorporated only under general laws.

In the other sections of the United States, a very different state of affairs has prevailed. Almost all of the New England, Eastern, and Southern States,[c] at one time or another since the civil war, have incorporated banking corporations by special acts. Free banking on the basis

[a] Constitution of Illinois (1870), Art. XI, sec. 1; vide P. & Chicago Gas Trust Co. (130 Ill., 268).

[b] Cal. (1849), Art. IV, sec. 31, and (1879), Art. XII, secs. 1 and 5; Kans. (1855), Art. XIII, sec. 1; Oreg. (1857), Art. XI, sec. 2; Nev. (1864), Art. VIII, sec. 1; Nebr. (1866), Corp's, sec. 1 and (1875), Art. XI, sec. 1; Colo. (1876), Art. XV, secs. 2, 3; N. Dak. (1889), sec. 131; S. Dak. (1889), sec. 191; Mont. (1889), Art. XV, secs. 2, 3; Wyo. (1889), Art. III, sec. 27; Wash. (1889), Art. XII, sec. 1; Idaho (1889), Art. XI, sec. 2; Utah (1895), Art. XII, sec. 1; Okla. (1907), Art. IX, sec. 38. By act of Congress of March 2, 1867 (ch. 150, 14 Stat. L., 426), the legislative assemblies of the Territories were forbidden to grant private charters, but were permitted to incorporate associations by general acts for carrying on certain kinds of business. By act of March 3, 1885 (ch. 330, 23 Stat. L., 348), banks of deposit and discount (but not of issue) were included in the list of businesses for carrying on which associations might be formed.

[c] The nomenclature of the groups of States followed in this essay is that used by the Comptroller of the Currency in his report for 1909; the States included in each group may be seen by a reference to the tables in Appendix A.

of a bond deposit had been adopted in the antebellum period in several of these States, but only in New York as an exclusive system. By the side of the specially chartered banks, however, the free banks played in most of these States but an insignificant rôle; and when, by the imposition of the 10 per cent tax on notes, no opportunity was left for the issue of notes, these States returned for the most part to the exclusive use of special charters for the incorporation of banks.

In the New England States the policy of incorporating banks by special act held its ground until very recently.[a] In 1904 Massachusetts enacted a general law for the incorporation of trust companies with banking powers;[b] in 1907 Maine made similar provisions,[c] and in 1908 Rhode Island provided for the incorporation of banks and trust companies by a "board of bank incorporation."[d] There is a movement in the same direction in the other States in this group. In 1909 it was proposed to enact a general incorporation law for banks in Connecticut, but the bill failed to pass.[e] In 1906 Governor Proctor in his message to the Vermont legislature recommended the enactment of a general law for the incorporation of trust companies.

[a] Until 1906 Vermont permitted the organization of state banks under a general law which was designed for the incorporation of banks of issue, and in Massachusetts the old free banking law has been retained on the statute books; but in both cases the conditions imposed have been too onerous for banks simply of discount and deposit.

[b] Mass. (1904), chap. 274.

[c] Me. (1907), chap. 96.

[d] R. I. (1908), chap. 1590.

[e] Proceedings of the Eighth Annual Convention of the National Association of Supervisors of State Banks (1909), p. 65.

In New York, New Jersey, and Pennsylvania the old free banking laws were retained on the statute books. In New York the antebellum law was modified to suit the new conditions, and special acts were not granted for state banks. Trust companies, however, were incorporated under special acts until 1887, when a general law was enacted. In Pennsylvania and New Jersey resort was had for a time to special acts for the incorporation of both banks and trust companies. Incorporation by special acts was forbidden by the Pennsylvania constitution of 1873,[a] and by the amendments to the New Jersey constitution adopted in 1875.[b] Maryland has had since 1870 a general law for the incorporation of state banks; but this law has been little used, and practically all banks and trust companies in that State have been organized under special acts.[c] In 1910, however, the general assembly passed a general law for the incorporation of both banks and trust companies. Delaware alone of the Eastern States retains the special act as the sole method of incorporating banks, and the constitution of 1897 expressly excepts banks from the corporations which must be formed under general laws.[d]

The same tendency, but slower in operation, may be observed in the Southern States. Until very recently the commercial and manufacturing industries of the South

[a] Art. III, sec. 7.

[b] Art. IV, sec. 7, Clause 11.

[c] The Maryland constitution of 1867 (Art. III, sec. 48) permits the legislature to use its discretion as to the method of incorporating banks. In 1876 (L., p. 292) provision was made for incorporating trust companies under a general law, but this act was repealed in 1892 (L., ch. 272.).

[d] Constitution of Delaware (1897), Art. IX, sec. 1.

have not been important, and in consequence freedom of incorporation has advanced more slowly. Even ordinary business corporations in many of the Southern States were chartered only by special act nearly as late as the civil war, and in only a few of the States were there general banking laws. Until the period of reconstruction special charters had not been forbidden in any of the Southern state constitutions except that of Louisiana.[a] The framers of the reconstruction constitutions were familiar with the provisions—then in force in the Middle West—requiring corporations to be formed under general laws, and they attempted to introduce that policy. In some cases the provisions inserted with this aim were either so limited in application as to leave the hands of the legislature practically free, or they excepted banking corporations. In other cases such provisions were omitted in the constitutions adopted somewhat later, but in Tennessee,[b] Arkansas,[c] and West Virginia[d] they were effective. More recently Texas, Louisiana, Mississippi, Kentucky, Virginia, Florida, and Alabama have, by constitutional provisions, adopted the general law as the exclusive method of incorporation.[e] Amendments to the constitution of Georgia, adopted in 1891, and to the constitution of South Carolina,

[a] The Louisiana constitution of 1845 (Title VI, art. 123) prohibited incorporation under special act, but this provision was not inserted in the constitution of 1852.

[b] Tenn. (1870), Art. XI, sec. 8.

[c] Ark. (1868), Art. V, sec. 48.

[d] W. Va. (1861–1863), Art. XI, sec. 5, and (1872), Art. XI, sec. 1.

[e] Tex. (1876), Art. XII, sec. 1; (1904) amdt. to art. 16, sec. 16; La. (1879), art. 46, also (1898) art. 48; Miss. (1890), sec. 178; Ky. (1891), sec. 59, subd. 17; Va. (1902), Art. XII, sec. 154; Fla. (amdt., 1900), Art. III, sec. 25; Ala. (1901), Art. XII, sec. 229.

adopted in 1905, forbade the incorporation of banks by special act.[a]

While these changes did not affect to any considerable degree the method of incorporating ordinary business corporations in any of these States, since general laws for the incorporation of manufacturing and mercantile businesses were already in existence, they did, in several of the States, mark a change in the method of granting banking charters, although independently of constitutional changes there had been an increasing use of the general law as a method of incorporation.[b] In North Carolina alone of the Southern States is the legislature at present free to charter banks by special act, and in 1903 a general law for the incorporation of state banks was enacted in that State. In 1907 this general law was amended so as to provide for the incorporation of trust companies.

The net result of this development has been an almost complete change in the method of incorporating banking institutions in the Southern and Eastern States. As late as 1870, the special charter was, except in two or three States, the only method of incorporating a bank. At present only one State—Delaware—does not permit the formation of banks or trust companies under general laws, and in only two others—Maryland and North Carolina—is the special act used with more or less frequency.

One result of the increasing regulation of state banking institutions noted in the preceding chapter has been a

[a] S. C. (1895), Art. IX, secs. 2, 9.

[b] General laws for chartering banking corporations were enacted in Virginia in 1870, Alabama in 1881 (L., 1881, ch. 102), South Carolina in 1885 (L., 1885, XIX, 212), Florida in 1889 (L., 1889, ch. 3864).

marked change in the character of the general laws under which banking institutions are incorporated. In nearly all the States, prior to the civil war, there were "business incorporation laws," under which associations for carrying on any manufacturing, mercantile, or mining business might be formed. Banks were not allowed in any of the States to incorporate under these laws, but were required to organize either under special acts or under a general banking law which differed materially in many particulars from the general law under which ordinary business enterprises were incorporated.

In some of the "free banking" States the old general banking laws were retained after the retirement of the state bank note issue; but in others they were repealed, and banks were allowed to incorporate under the "business incorporation law." The new States of the West also, without any traditions of note issue, allowed banking corporations to be formed under the same incorporation laws as mining, manufacturing, and mercantile corporations. Prior to 1887 only a few of the States which incorporated banks and trust companies under general laws provided separate incorporation laws for them; but since then, in nearly all the States, general bank and trust company laws for the incorporation of banks and trust companies, distinct from the "business incorporation laws," have been enacted.[a] With the increasing regulation of

[a] In some States the general trust-company law preceded the general banking law. This was due to the fact that in many States doubt existed as to whether a corporation unless specially empowered could act as an administrator or executor Many of the early general trust-company laws were, therefore, confined to authorizing the incorporation of companies with such powers.

banking institutions, the general banking law tends to be differentiated more and more from the "business incorporation law."

Since 1865 state banks and trust companies have been incorporated by the use of one of three methods: (1) By special charter; (2) under the "business incorporation law;" (3) under the general banking law. Not very many of the States have used consecutively all three methods, for the special charter and the "business incorporation law" were used contemporaneously in different sections of the country. Both have given place, in the great mass of States, to the general banking law. From 1865 to 1875 probably the greater number of the banks formed were incorporated under special acts; from 1875 to 1887 incorporation under the "business incorporation law" was the prevailing method, and since then the general banking law has become the almost universal method of incorporating banks and trust companies.

CHAPTER II.

CAPITAL.

The amount of the capital stock of banks formed under the "business incorporation laws," designed as these laws are to accommodate many kinds of business enterprises, is left almost entirely to the discretion of the incorporators.[a] When the States began to give attention to the regulation of the banking business the question of capital received immediate attention. The national-bank act and the banking laws in New York and the Middle West which had survived from the antebellum period contained provisions concerning the amount and payment of capital. A requirement with regard to capital was recognized as the central point in any system of bank regulation. The capital stock is a buffer interposed between the bank's creditors and losses which the bank may suffer. If there is no capital, losses may fall directly on the creditor, and the larger the capital stock, other things being equal, the less the likelihood of loss to the depositor.

I. STATE BANKS.

AMOUNT OF REQUIRED CAPITAL.

At the present time only four of the States and Territories which permit the incorporation of state banks under general laws—Arizona, Arkansas, South Carolina, and

[a] The greater number of the "business incorporation laws" require neither a specified minimum nor a specified maximum capital. In some, however, a small minimum, rarely exceeding $1,000, is required.

Tennessee—have no requirements as to the minimum capital of banks.[a] In these States banks are organized under the "business incorporation law," and, so far as the requirement of a capital is concerned, are on the same footing as other corporations. The decision as to the amount of capital needed rests entirely with the persons seeking incorporation.

The requirements as to capital in the other States and Territories which incorporate state banks under general laws may be grouped into three classes: (1) In the first the minimum capital required is the same for all banks, irrespective of location or amount of business. Such are the requirements in Georgia, Indiana, Montana, New Jersey, New Mexico, Ohio, Virginia, and West Virginia. (2) In the second class the amount of capital required is graded entirely according to the population of the town or city in which the bank is located. The requirements are of this kind in Alabama, Colorado, Florida, Idaho, Iowa, Illinois, Kentucky, Louisiana, Maryland, Michigan, Minnesota, New York, North Dakota, North Carolina, Oregon, Pennsylvania, Utah, Washington, Wisconsin, and Wyoming.[b] (3) In the third class the amount of capital required is determined in part by the amount of business done by the bank. In all the States which have a require-

[a] In those States which incorporate banks by special act, the amount of capital is fixed for each bank by the legislature. In Rhode Island the amount of capital is determined by the board of bank incorporation. In none of the New England States is a minimum capital required for banks under a general law, except in Massachusetts. The Massachusetts general banking law, however, is obsolete, and its provisions are not considered in the following discussion.

[b] In Idaho and Washington the laws require not a minimum capital, but a minimum amount of property.

ment as to capital of this kind, there is an additional requirement similar either to that of the first class or to that of the second class. Such is the law in California, Kansas, Nebraska, Nevada, Oklahoma, Rhode Island, South Dakota, and Texas.

It will be convenient to consider first the differences among the States and Territories in regard to the smallest capital with which a bank is allowed to organize, disregarding for the present the additional capital required in most of the States for banks located in larger towns or for banks doing a greater amount of business. The smallest capital with which a bank may be incorporated varies in the different States from $50,000 to $5,000, but only one State requires as much as $50,000, and in only one State can a bank be incorporated with so small a capital as $5,000. The great mass of the States require from $10,000 to $25,000.

These amounts have been determined in three ways: (1) In the States which for a time allowed banks to incorporate on the same terms as ordinary business corporations, the legislatures, when they came to provide for a minimum capital, accepted the existing situation. For instance, when California, in 1895, required banking corporations to have a minimum capital, the smallest permissible capital was placed at $25,000, because there were not in the State many banks whose capital was less than $25,000; and it was thought that no great injury would be done by requiring such banks to increase their capital. Similarly, in Oregon, which first differentiated banking from ordinary business corporations in 1907, the

banking law fixed $10,000 as the smallest capital for a state bank, because there were in operation many banks with no larger capital.[a] (2) In those States which have passed from the use of special charters to general laws for the incorporation of banks, the smallest permissible capital was fixed in the general banking law at an amount about equal to the capital of the smallest banks formerly incorporated by special act. (3) The smallest permissible capital has been set in the third group in an entirely different way. As has been said before, certain States in which "free banking" laws were in force before the war retained those laws. These States were Indiana, Ohio, Minnesota, Michigan, Wisconsin, New York, and Louisiana. In none of these States could banks be organized with less than $25,000; in New York and Michigan the smallest capital was $50,000, and in Louisiana $100,000. In Minnesota,[b] Michigan,[c] New York,[d] Wisconsin,[e] and Louisiana,[f] by amendment or by the enactment of new laws, the amount required has been decreased; but in Ohio and Indiana it has remained $25,000.

The differences in the smallest permissible capital are to some extent sectional. In none of the Eastern States may the capital of banks incorporated under the general banking laws be less than $25,000, except in Maryland, where by the act of 1910 banks may be incorporated with a capital of $10,000. In New Jersey the smallest per-

[a] Oreg. (1907), chap. 138.
[b] Minn. (1887), chap. 63.
[c] Mich. (1887), act. 205, sec. 1; (1891) act 10; (1899) act 265.
[d] N. Y. (1874), chap. 126; (1882) chap. 409, sec. 29; (1892) chap. 689
[e] Wis. (1903), chap. 234; (1908) chap. 109.
[f] La. (1882), chap. 80.

missible capital is $50,000. In Ohio, Indiana, Illinois, and Iowa[a] it is $25,000, and in Michigan $20,000. In the other Middle Western States and in all of the Western States with the exception of Montana and New Mexico, which require, respectively, $20,000 and $30,000, the smallest permissible capital is $10,000. All of the Pacific States, with the exception of California, which requires $25,000, allow the incorporation of banks with a capital of $10,000. Of the Southern States, Virginia, Mississippi, Louisiana, and Texas incorporate banks with $10,000 capital. The smallest permissible capital in Alabama, Florida, and Kentucky is $15,000. In Georgia and West Virginia the capital of a bank must be at least $25,000. In North Carolina banks may be chartered with a capital of $5,000.

The States and Territories may be divided, then, roughly into two great groups according to the amount of the smallest permissible capital for state banks:

1. In the Eastern States and the more easterly of the Middle Western States, the banking laws, with one exception, require that banks shall have a capital of at least $25,000.

2. In the other sections of the United States banks in most of the States are incorporated with a capital as small as $10,000, although in a few of these States the

[a] In Iowa, since 1874 (15 G. A., chap. 60), savings banks, which exercise also the functions of commercial banks, may be formed with a capital of $10,000. In the period immediately after the civil war in both Kansas and Missouri, general laws for the incorporation of banks to be known as savings banks, but with all the powers of commercial banks and none of the restrictions of savings banks, were enacted. These banks were to have a capital of $50,000, but only 10 per cent of capital was required to be paid in. In Ohio, from 1889 to 1908, "savings banks" might be formed with a capital of $25,000, of which only one-half had to be paid in.

smallest permissible capital is $15,000, $20,000, $25,000, and $30,000, and in one it is $5,000.

In several States which formerly permitted the incorporation of banks with very small capital the required amount of capital has been increased. When Kansas, Nebraska, North Dakota, South Dakota, and Oklahoma first enacted general banking laws they permitted the incorporation of banks with a capital of $5,000. In Wisconsin, by an act passed in 1903, banks with $5,000 capital were authorized. In all of these States the state-bank supervisors complained repeatedly that banks with a very small capital were not satisfactory;[a] and in all of these States the smallest permissible capital for banks has been increased to $10,000. The only State which permits the incorporation of banks with a smaller capital than $10,000 is North Carolina.

In a few States the bank supervisors have complained that banks of even larger capital are too small. In Michigan the bank commissioner urged in 1898 that the provision authorizing the formation of banks with a capital of $15,000 in towns of less than 1,000 population should be repealed,[b] and since 1899 the smallest permissible capital for a state bank in Michigan has been $20,000. In Louisiana also the bank examiner has urged that banks should not be incorporated with less than $25,000 capital.[c]

As has already been noted, the amount of capital required, except in a few States, is not a uniform amount,

[a] Report of the State Bank Commissioner of Kansas, 1891–92; *Ibid,* 1893–94; Report of the State Bank Commissioner of North Dakota, 1892; Report of the Public Examiner of South Dakota, 1908; Report of the Oklahoma Bank Commissioner, 1900, p. 6; Report of the Commissioner of Banking of Wisconsin, 1903.

[b] Report of Bank Commissioner of Wisconsin, 1898, p. x.

[c] Report of Bank Examiner of Louisiana, 1898, p. 5.

but is graded, usually according to the size of the city in which the bank is located. In 29 of the 37 States and Territories which require under a general law a specified amount of capital for the incorporation of state banks the amount of capital is thus graded. The grading of the amount of capital required according to the population of the place in which a bank is located has been chiefly due to the desire to bring about some adjustment between the capital of each bank and the volume of its business. It is assumed that the larger the business of the bank the greater the chance of its suffering large losses and the larger the capital necessary to protect its depositors against loss. It is also assumed that the size of the city in which it is located is a rough index of the volume of business done by a bank. Under many of the state banking laws the grades are very numerous. In Nebraska, for instance, if the bank is located in a town or village of less than 100 inhabitants, the capital must be not less than $10,000; in a town or village of from 100 to 500 inhabitants, not less than $15,000; in a town or village of from 500 to 1,000, not less than $20,000; in a town or village of from 1,000 to 2,000, not less than $25,000; in a town or village of from 2,000 to 5,000, not less than $35,000; in a city of from 5,000 to 25,000, not less than $50,000; in a city of from 25,000 to 100,000, not less than $100,000; in a city of 100,000 or more, not less than $200,000. The minute gradation of the capital requirements found in many of the state banking laws is due to the desire to encourage the formation of banks in the smaller cities and towns, for it is to be noted that in the greater part of the state laws the grades are not numerous for the larger places. After the requirement

reaches, in most States, $25,000, and in some $50,000, no increase is made for larger places. It is only in Idaho, Illinois, Kentucky, Louisiana, Maryland, Michigan, Nebraska, New York, Oklahoma, Texas, Utah, Washington, and Wyoming that the required capital is as great as $100,000. There has been, however, in the last ten years a tendency to extend the scales upward.

One of the most noteworthy differences between the national-bank act and nearly all the state banking laws is the difference in the amount of capital required for the incorporation of banks in small places. Under the national-bank act no bank can be incorporated with a smaller capital than $25,000 and banks in towns with a population of over 3,000 are required to have a capital of $50,000. The table on the next page shows the amount of capital required under the state banking laws in towns with a population of less than 3,000.

If the States and Territories are classified according to the relative amount of capital required for state or national banks in towns of less than 3,000 population, they fall into the following groups:

1. In New Jersey and New Mexico the amount of capital required for state banks is greater than the amount required for national banks in all places of less than 3,000 population. In New York the amount required in the smaller towns is the same for state and national banks, but in towns of 2,000 to 3,000 population the capital required is larger for state banks.

2. In seven States—California, Indiana, Iowa, Illinois, Ohio, Pennsylvania, and West Virginia—the required capital is the same in all places of less than 3,000 population for state and national banks.

State Banks and Trust Companie

Capital required for state and for national banks in towns of less than 3,000 population.

	Smallest permissible capital.	Capital required in towns with a population of—					
		100.	500.	1,000.	1,500.	2,000.	2,500.
National-bank act	$25,000	......	......	......	......	......	......
Alabama	15,000	......	......	......	......	......	$25,000
California	25,000	......	......	......	......	......	......
Colorado	10,000	......	......	......	......	$15,000	......
Florida	15,000	......	......	......	......	......	......
Georgia [a]	15,000	......	......	......	......	......	......
Idaho	10,000	......	......	......	......	20,000	......
Illinois	25,000	......	......	......	......	......	......
Indiana	25,000	......	......	......	......	......	......
Iowa	25,000	......	......	......	......	......	......
Kansas	10,000	......	$15,000	$20,000	......	25,000	......
Kentucky	15,000	......	......	......	......	......	......
Louisiana	10,000	......	......	......	......	......	30,000
Maryland	10,000	......	......	......	$20,000	......	......
Michigan	20,000	......	......	......	25,000	......	......
Minnesota	10,000	......	......	15,000	20,000	25,000	......
Mississippi	10,000	......	15,000	......	......	......	......
Missouri	10,000	......	......	......	......	......	......
Montana	20,000	......	......	......	......	......	......
Nebraska	10,000	$15,000	20,000	25,000	......	35,000	......
Nevada	10,000	15,000	20,000	25,000	......	35,000	......
New Jersey	50,000	......	......	......	......	......	......
New Mexico	30,000	......	......	......	......	......	......
New York	25,000	......	......	......	......	50,000	......
North Carolina	5,000	......	......	......	10,000	......	......
North Dakota	10,000	......	......	20,000	......	30,000	......
Ohio	25,000	......	......	......	......	......	......
Oklahoma	10,000	......	15,000	......	25,000	......	......
Oregon	10,000	......	......	25,000	......	30,000	......
Pennsylvania	25,000	......	......	......	......	......	......
South Dakota	10,000	......	......	......	15,000	......	25,000
Texas	10,000	......	......	......	......	......	25,000
Utah	10,000	......	......	......	......	......	......
Virginia	10,000	......	......	......	......	......	......
Washington	10,000	......	......	15,000	......	20,000	......
West Virginia	25,000	......	......	......	......	......	......
Wisconsin	10,000	......	......	......	20,000	......	......
Wyoming	10,000	......	......	......	......	25,000	......

[a] The minimum capital of a bank in Georgia is nominally $25,000; but no provision is made for the payment of capital to the amount of more than $15,000. See p. 55.

3. In Louisiana, Nevada, North Dakota, Nebraska, and Oregon, the amount of required capital is smaller for state banks than for national banks in the smaller towns; but before the population reaches 3,000 the capital required exceeds that required for national banks.

4. In Alabama, Kansas, Michigan, Oklahoma, Minnesota, South Dakota, Texas, and Wyoming the required capital is smaller for state banks than for national banks in the smaller places, but rises to the same amount as that required for national banks before the population reaches 3,000.

5. Finally, in the remaining States—Colorado, Georgia, Florida, Idaho, Kentucky, Maryland, Mississippi, Missouri, Montana, North Carolina, Utah, Virginia, Washington, and Wisconsin—the amount of capital required is less under the state banking laws than under the national-bank act for all places of less than 3,000 in population.

From this survey it appears that in all except 10 of these 37 States the capital required for state banks in the smaller towns is less than that required for national banks, and that in a considerable number of the States it is less in all towns of less than 3,000 population. In only a very few States is the capital required for state banks in towns of less than 3,000 population greater than the amount required for national banks.

Capital required for state and for national banks in towns and cities with a population of 3,000 and less than 25,000

	Capital required in towns and cities with a population of—							
	3,000.	3,500.	4,000.	5,000.	6,000.	10,000.	15,000.	20,000.
National-bank act	$50,000				$100,000			
Alabama	25,000							
California	25,000							
Colorado	15,000			$25,000		$30,000		
Florida	25,000				50,000			
Georgia	15,000							
Idaho	25,000			30,000		50,000		
Illinois	25,000			50,000		100,000		
Indiana	25,000							
Iowa	50,000							
Kansas	25,000						$50,000	
Kentucky	15,000							
Louisiana	30,000					50,000		$100,000
Maryland	20,000	$25,000		30,000		50,000		
Michigan	25,000			50,000				100,000
Minnesota	25,000							
Mississippi	15,000							
Missouri	10,000							
Montana	20,000							
Nebraska	35,000			50,000				
Nevada	35,000			50,000				
New Jersey	50,000							
New Mexico	30,000							

Capital required for state and national banks in towns and cities with a population of 3,000 and less than 25,000—Continued.

	Capital required in towns and cities with a population of—							
	3,000.	3,500.	4,000.	5,000.	6,000.	10,000.	15,000.	20,000.
New York	$50,000							
North Carolina	10,000			$25,000				
North Dakota	35,000		$40,000	50,000				
Ohio	25,000							
Oklahoma	25,000				$50,000			$100,000
Oregon	30,000			50,000				
Pennsylvania	25,000			50,000				
South Dakota	25,000			50,000				
Texas	25,000					$50,000		100,000
Utah	10,000	$25,000				50,000		
Virginia	10,000							
Washington	25,000			30,000		50,000		
West Virginia	25,000							
Wisconsin	20,000	25,000		30,000		50,000		
Wyoming	25,000		50,000		100,000			

The difference between the amount of capital required for state banks and that required for national banks in places having a population of from 3,000 to 25,000 is even more marked. Under none of the state banking laws is the capital required in cities of any size in this class larger than that required under the national-bank act. Under the state banking laws of Iowa, New York, and New Jersey, the capital required is as large as under the national-bank act for cities of smaller population within the class, but it is less for cities of larger population within the class. Under the state banking laws of Illinois, Michigan, Oklahoma, Texas, and Wyoming, the capital required is less than is required under the national-bank act for the smaller cities within the class, but is the same for the larger cities. In the remaining States—over three-fourths of the total number prescribing a required capital—the capital required is less than under the national-bank act for all cities of from 3,000 to 25,000 population. In several of the States the capital required is very much less. A state bank, for instance, may be incorporated in any city in Mississippi with a capital of $15,000, in any city in Virginia with $10,000, whereas under the national-bank act banks in cities with a population of from 3,000 to 6,000 must have a capital of at least $50,000, and in cities with a population of from 6,000 to 50,000 banks must have a capital of at least $100,000.

Capital required for state and for national banks in cities with a population of 25,000 and over.

	Capital required in cities with a population of—					
	25,000.	30,000.	50,000.	100 000.	110,000.	150,000.
National-bank act	$100,000	....	$200,000	....	....	....
Alabama	25,000	....	....	....	....	....
California	25,000	....	....	....	....	....
Colorado	30,000	....	....	....	....	....
Florida	50,000	....	....	....	....	....
Georgia	15,000	....	....	....	....	....
Idaho	100,000	....	....	....	....	....
Illinois	100,000	....	200,000	....	....	....
Indiana	25,000	....	....	....	....	....
Iowa	50,000	....	....	....	....	....
Kansas	50,000	....	....	....	....	....
Kentucky	15,000	....	100,000	....	....	....
Louisiana	100,000	....	....	....	....	....
Maryland	50,000	....	100,000	....	....	$200,000
Michigan	100,000	....	....	....	$250,000	....
Minnesota	25,000	....	....	....	....	....
Mississippi	15,000	....	....	....	....	....
Missouri	10,000	....	....	....	....	100,000
Montana	20,000	....	....	....	....	....
Nebraska	100,000	....	....	$200,000	....	....
Nevada	50,000	....	....	....	....	....
New Jersey	50,000	....	....	....	....	....
New Mexico	30,000	....	....	....	....	....
New York	50,000	$100,000	....	....	....	....
North Carolina	25,000	....	....	....	....	....
North Dakota	50,000	....	....	....	....	....
Ohio	25,000	....	....	....	....	....
Oklahoma	100,000	....	....	....	....	....
Oregon	50,000	....	....	....	....	....
Pennsylvania	50,000	....	....	....	....	....
South Dakota	50,000	....	....	....	....	....
Texas	100,000	....	....	....	....	....
Utah	50,000	....	100,000	....	....	....
Virginia	10,000	....	....	....	....	....
Washington	75,000	....	100,000	....	....	....
West Virginia	25,000	....	....	....	....	....
Wisconsin	50,000	....	....	....	....	....
Wyoming	100,000	....	....	....	....	....

In the table on page 48 are shown the requirements as to capital of the national-bank act and of the state banking laws for banks in cities with a population of from 25,000 to 150,000. It will be noted that in the banking laws of very few States is the amount of capital required larger for banks in cities of over 25,000 than for banks in cities with a population of 25,000. Such requirements are made only in the laws of Illinois, Kentucky, Maryland, Michigan, Missouri, Nebraska, New York, Utah, and Washington. In only one State is the amount of capital required for any part of the class of cities having a population of 25,000 or more greater for state banks than for national banks. Under the Michigan banking law, banks in cities of 110,000 population are required to have a capital of $250,000, whereas national banks may be chartered in such cities with a capital of $200,000. The amount of capital required under the state banking law of Illinois is the same for banks in all cities in this class as that required by the national-bank act. Under the state banking laws of Idaho and Louisiana the amount of capital required is the same as under the national-bank act for banks in cities with a population of 25,000 to 50,000, but for banks in cities with a population of more than 50,000 the amount of capital required under the national-bank act is larger. Under the state banking law of Maryland the amount of capital required is less than under the national-bank act for banks in cities with a population of less than 150,000, but the same for banks in cities with a population of 150,000. Under the Nebraska banking law the capital required is the same as under the national-bank act for banks in cities of from 25,000 to

50,000 population, less for banks in cities of from 50,000 to 100,000, and the same for banks in cities of over 100,000. In the remaining States, three-fourths of all, the specified requirements for banks in all cities of 25,000 population and over are less under the state banking laws than under the national-bank act.

The grading of the amount of capital required according to the population of the place in which the bank is located is evidently a very crude way of securing a proportion between capital and volume of business. The elaboration of the scale is of some service, but there remain differences in the volume of business transacted in places of the same size and the more important differences in the amount of competition which different banks must meet. As has already been noted, in a few of the state systems the requirement as to capital is graded directly according to some criterion of the amount of business done by the bank. The earliest attempt to apply this principle is found in the Iowa savings bank law of 1874. The capital of banks incorporated under that act was fixed at $10,000, but it was provided that such banks might receive deposits only to the amount of ten times their capital.[a] If a bank secured deposits to a larger amount, it was required to increase its paid-up capital. The efficacy of this provision has been much impaired by two amendments. In 1900 banks were allowed to count their surplus as part of their capital in making up the required capital;[b] and in 1902 the requirement was modified so as to demand a capital and surplus equal only to one-twentieth of the deposits.[c]

[a] Iowa (1874), chap. 60, sec. 7.

[b] Iowa (1900), chap. 67.

[c] Iowa (1902), chap. 167.

A more important experiment in the same direction was made in Kansas from 1897 to 1901. In 1897 the legislature of that State, convinced of the desirability of grading in some way the requirement as to capital, enacted that the total investments of any bank, exclusive of United States bonds, should not exceed four times the capital and surplus actually paid in.[a] The purpose and operation of this clause was thus described by the Kansas bank commissioner:[b]

> One provision, which produced the greatest opposition, was the section which limited the total investments of every bank to four times its capital and surplus. The theory upon which the adoption of this section was urged was that a bank's capital should bear some proper proportion to the volume of business transacted by it; and there being no possible way by which the amount of deposits could be restricted, the idea of restricting the investments appeared to be not only possible but wise. It was argued in support of the proposition that it would result in an increase in the capital of small banks, thereby giving greater protection to depositors; that it would not be a difficult matter to procure additional capital when, for each $1,000 thus invested, the bank could invest $4,000, and above all, that banks should be content with receiving an income on $4 for every dollar invested. The operation of this section has resulted in nearly 100 banks increasing either their capital or surplus. Many have carried their entire earnings to surplus, thereby adding to the strength of the bank and the security of depositors.

The law was repealed against the objection of the commissioner in 1901,[c] and in 1908 a scale graded according to population was adopted.[d] In 1909, however, it was enacted that no bank might accept deposits in excess of ten times its paid-up capital and surplus.

[a] Kans. (1897), chap. 47, sec. 9.
[b] Report of Kansas Bank Commissioner, 1897–98, p. viii.
[c] Kans. (1901), chap. 64.
[d] Kans. (1908), chap. 15.

Within recent years seven other States—California, Nevada, Oklahoma, South Dakota, Texas, Nebraska, and Rhode Island—have adopted similar methods of determining the amount of capital required. In California, by the act of 1909, a graded scale, ranging from $25,000 in cities of 5,000 population or less to $200,000 in cities of over 25,000 population, was replaced by a requirement of $25,000 for all banks, together with a requirement that the "aggregate of paid-up capital, together with the surplus, of every bank must equal 10 per cent of its deposit liabilities." If the deposits reach this proportion, the bank must either increase its capital or refuse to receive additional deposits.[a] In 1908 the legislature of Oklahoma gave authority to the bank commissioner to fix the proportion between capital and deposits, and in 1909 it was provided that no bank should receive deposits in excess of ten times its paid-up capital and surplus.[b] In South Dakota the proportion of capital and surplus to deposits must be 1 to 15;[c] in Rhode Island, 1 to 10.[d] In Texas a much more complicated arrangement has been introduced. On November 1 of each year the average daily deposits of the preceding year are computed. If the bank has a capital stock of not more than $10,000 and its deposits are more than five times its capital and surplus, the bank must increase its capital stock 25 per cent within sixty days, or keep its deposits within the prescribed limit. Similar provisions are made for banks of

[a] Cal. (1909), chap. 76, sec. 19.
[b] Okla. (1908), p. 126; (1909), pp. 120, 121.
[c] S. Dak. (1909), chap. 223, Art. II, sec. 1.
[d] R. I. (1908), chap. 1590.

larger capital, but the proportion of deposits to capital and surplus is increased for banks of larger capital until in the case of banks with a capital of $100,000 or more the proportion allowed is 10 to 1. The Nevada and Nebraska banking laws provide that "loans and investments, exclusive of reserve, banking house, and fixtures," shall not exceed eight times the amount of capital and surplus.

In Kansas, Nebraska, Nevada, Oklahoma, South Dakota, and Texas the requirement that capital shall be in a certain proportion either to deposit or to loans is coupled with a capital requirement graded according to population. In California it is coupled with a flat minimum requirement. In Rhode Island the board of bank incorporation determines the amount of capital required for the incorporation of a bank.

The adjustment of the amount of capital required according to population serves another purpose, however, besides preserving roughly a proportion between the amount of capital and the amount of business, in that it also acts as a check on excessive competition. A requirement graded entirely or chiefly according to deposits or loans does not accomplish this end. For instance, if the capital required to establish a bank in a city of 3,000 population is $50,000, there will usually be only one bank in a place of that population, since there is not enough business to make it profitable for two banks to incorporate with that amount of capital. Under the California law of 1909 a bank with commercial and savings departments may be organized in any California town or city, even in San Francisco or Los Angeles, with a capital of $25,000.

Competition is much freer under such a requirement than under a requirement graded according to population. Undoubtedly, the number of banks will be somewhat larger. The supervisors of banks in the different States appear to be in fair agreement that such a multiplication of banks is undesirable from the standpoints of safety and economy. It is likely, therefore, that if requirements as to capital based directly on some index of business are introduced widely in the state banking laws that they will, as in most of the laws now in force, supplement and not supplant the requirements graded according to population.

PAYMENT OF CAPITAL.

Under the "business incorporation laws," three kinds of capital may be distinguished: Authorized, subscribed, and paid up. The amount of the difference between subscribed and paid-up capital is left by the "business incorporation laws" in most of the States largely to the discretion of the directors, who have power to require the payment of the stock subscription in such sums and at such times as they think proper.[a]. It is possible therefore for the subscribed capital of such corporations to be largely in excess of the sum actually paid in. In South Carolina, for example, where banks are still organized under the "business incorporation law," a bank may begin business when 50 per cent of its authorized capital has been subscribed, and 20 per cent of the subscribed capital has been paid. A bank with an authorized capital

[a] In some States a specified part of the subscribed capital must be paid in, e. g., in Vermont one-fourth; a number of States require that 10 per cent shall be paid in, but in most of the States no amount is fixed.

of $50,000 may consequently have a subscribed capital of $25,000, and a paid-up capital of $5,000. In Arkansas, Arizona, South Carolina, and Tennessee the provisions for the payment of the capital of banks are the same as those for the payment of the capital of ordinary business corporations.

Obviously, if any law requiring a minimum capital for banks is to be effective, it must provide specifically for the payment either of all the capital or of a specified sum; otherwise the directors of the bank may require the payment of only a small part of the capital. In West Virginia, for example, an act passed in 1881 required banking corporations to have a capital of $25,000, but made no provisions for the payment of the capital.[a] The state bank examiner pointed out repeatedly that the effect of the law was to allow the incorporation of banks with a merely nominal paid-up capital.

In a few States the requirement for the payment of the capital stock of banks has taken the form of requiring that a specified sum should be paid in. The directors might if they saw fit leave the remainder of subscribed capital outstanding. Thus, in Wisconsin until 1903, although the minimum capital was $25,000, only $15,000 had to be paid in, the remainder being at the call of the directors. The result was the establishment of an actual minimum capital of $15,000. Similarly, in West Virginia, the act of 1901 required that 40 per cent of the capital should be paid in; but the payment of the remainder was left to the discretion of the directors. In Georgià, at the

[a] W. Va. (1881), chap. 17.

present time, 20 per cent of the capital and not less than $15,000 must be paid in, but there are no provisions for the payment of the remainder. Similarly, in Alabama and Idaho, after a specified minimum capital graded according to population has been paid in, the payment of any remaining capital stock is subject to the discretion of the directors. In Maryland the act of 1910 provides for the payment of the specified minimum capital in full, but does not provide that the authorized capital shall be fully paid. The California law of 1909 includes a similar provision.

All the other States which require the payment of a specified capital require that it shall all be paid in, and not merely a specified sum. The objection to permitting part of the capital of banking corporations to remain unpaid is that depositors may be deceived by the advertisement of capital not fully paid. In California, until 1895, there were no provisions for the payment of bank capital, and in 1890 the bank commissioners said:

> Licenses to conduct the business of banking have been demanded and received under the law, the commissioners being powerless to refuse them, when the amount of capital stock paid up was merely nominal—in fact, infinitesimal—and these concerns most loudly proclaim their authorized capital.[a]

The provision in the national-bank act concerning the payment of capital has been the model for similar provisions in the banking laws of a large number of the States. In the following States 50 per cent must be paid in before the bank begins business and the remainder in a specified time, ranging from ninety days to two and one-half years:

[a] Twelfth Annual Report of Banking Commissioners of California, 1890.

Colorado, Florida, Indiana, Kentucky, Louisiana, Maryland, Michigan, Missouri, North Carolina, North Dakota, New Mexico, Ohio, Oregon, Pennsylvania, Virginia, Washington, and Wyoming. In Utah 25 per cent must be paid in before the bank begins business, and the remainder within ten months. In Nevada 80 per cent must be paid in at the outset and the remainder in two years. In Mississippi specified sums must be paid in according to the population of the place in which the bank is located, and the remainder within five months.

There is a tendency to shorten the length of the period allowed for the full payment of the capital stock. In the greater part of the States which allow payment of part of the capital to be deferred, complete payment must be made in five months; and in only one, West Virginia, can complete payment be deferred more than a year. In the most recent legislation, a tendency to go somewhat further has manifested itself, and in New York, Iowa, Montana, Vermont, Minnesota, Nebraska, Illinois, South Dakota, New Jersey, Oklahoma, Rhode Island, Kansas, Texas,[a] and Wisconsin the entire capital stock must be paid up before any business can be transacted by the corporation.

Under the "business incorporation laws" in practically all the States, payments for the capital stock of corporations may be made in money or in other property. The particular kind of property which was once much favored in several of the States as a means of payment for bank stock was commercial paper. It frequently happened that

[a] The rule that the capital of banks shall be fully paid up in cash is incorporated in an amendment to the constitution of Texas adopted in 1904.

subscribers paid for their shares with their own notes, indorsed usually by other subscribers. The national-bank act does not specifically provide that capital shall be paid in cash, but the Comptroller has held that capital can only be so paid. Some of the state banking laws follow the wording of the national-bank act in this particular, and the state-bank officials in these States have generally required payments in cash.[a] A great number of the state banking laws explicitly provide that payments on capital stock shall be made "in cash" or "in money of the United States." In a few States still, however, payments for capital stock need not be made in money. In Idaho and Oregon banking corporations are required to have a minimum amount of property. This property may be in "money, commercial paper, bank furniture, fixtures, or the necessary banking building." In Nevada the capital stock may consist of money; deposits; national, state, county, or municipal bonds; furniture; building; and lot. The bonds must not aggregate more than one-half, nor the bank building and lot together with the bank furniture and fixtures more than one-third, of the paid-in capital. In these States the existing conditions are peculiar in that until quite recently no minimum capital has been required for state banks, and the requirement as to capital is chiefly

[a] The supreme court of Indiana in Coddington *v.* Conaday (157 Ind., 243), said: "It may be suggested that strong reasons exist for holding that the acceptance of anything but money in payment of subscriptions to the capital stock of a banking association is illegal. No authority for such transaction is found in the statutes, and the nature of the business to be carried on seems to forbid them." In Iowa as early as 1883 the attorney-general held that "commercial paper made by a stockholder for his stock can not be accepted as constituting any part of 'paid-up capital.'"

intended to set a standard for banks already actively engaged in business. In Washington a minimum amount of property is required for existing banks, but all new banks must have their capital paid in lawful money.

SURPLUS.

As an additional safeguard against loss to depositors a large number of the States require banks to set aside a part of their earnings to form a fund known in some of the States as a surplus, but in others as a guaranty fund. The Ohio "free banking" law of 1851 provided that banks incorporated under that law should retain one-tenth of their net earnings in a surplus fund until the fund amounted to 20 per cent of their capital. The same provision was made a part of the national-bank act.

Many of the state banking laws contain the same provision. In the following 19 States banks must set aside 10 per cent of their net earnings until a surplus of 20 per cent has been accumulated: Florida, Idaho, Kentucky, Louisiana, Maryland, Michigan, Missouri, Montana, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Washington, West Virginia, and Wisconsin. The recent legislation shows a tendency to require a more rapid rate of accumulation and a larger aggregate fund. In California, Indiana, Minnesota, and Nebraska 20 per cent, and in Kansas, Oklahoma, and Texas 10 per cent of net earnings must be carried to surplus until it amounts to 50 per cent of capital. The least stringent requirement for the accumulation of a surplus is that contained in the Virginia banking law, under which dividends must not be paid in excess of

6 per cent until a surplus equal to 10 per cent of capital has been accumulated.

In the remaining States which incorporate state banks—Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Georgia, Iowa, Illinois, Mississippi, New Hampshire, New Mexico, North Carolina, Rhode Island, Tennessee, Utah, and Wyoming—state banks are not required by a general law to accumulate a surplus. In Delaware, Connecticut, and New Hampshire the few state banks are chartered only under special acts, which in some cases provide for a surplus. The remaining States and Territories in the list, with the exception of Colorado, Georgia, Iowa, Illinois, Rhode Island, and Utah, are States in which banks are incorporated practically on the same terms as ordinary business corporations.

In most of the States the officials in charge of the supervision of banks have strongly recommended the enactment of laws providing for the accumulation of a large surplus. The supervisors have also encouraged the banks to build up a surplus in excess of the legal requirement. In at least two States—Nebraska and Louisiana—the supervisors publish in their reports a list of all banks that have a surplus of more than a certain amount.

IMPAIRMENT OF CAPITAL.

It is a general rule of the law of corporations that dividends are to be paid only from earnings. It is ordinarily difficult, however, to ascertain whether dividends are paid from capital or from earnings, since in estimating the assets of the corporation a valuation of its property

must be made. The assets of banking corporations, however, are preponderantly in the form of debts due the bank, and the value of such assets may usually be estimated with some accuracy.

A considerable number of the antebellum banking laws provided that dividends should be paid only from profits, and that if capital were impaired by losses no dividends should be paid until the capital was restored.[a] These laws also ordinarily defined bad debts—the most important item in calculating the profits of a bank for a given period. Provisions of the same kind were included in the national-bank act at the time of its passage. Dividends were to be paid only from profits, and in calculating the net profits of a bank for any dividend period debts on which interest was past due and unpaid for a period of six months, unless well secured and in process of collection, were to be considered bad debts.

In the banking laws of all the States except Alabama, Arizona, Arkansas, Delaware, Illinois, Mississippi, North Carolina, Rhode Island, South Carolina, and Virginia there are specific provisions prohibiting the payment of dividends except from "net profits," "actual earnings," or "net earnings." In only a few of the States, however, has any attempt been made to define the items which shall be subtracted in calculating assets. In Indiana, Kentucky, and South Dakota the provision contained in the national-bank act has been copied. In Minnesota a bad debt is one on which interest has been past due and unpaid for twelve months, unless the debt is well secured

[a] See, for example, N. Y. (1839), chap. 260, No. 28; Wis. (1852), chap. 479; sec. 40; Minn. (1866), Chap. XXXIII, No. 31; Ohio (1851), 49, v. 41, sec. 22; Ind. (1855), p. 23.

and in process of collection; in Louisiana debts on which payments of interest or principal have been overdue for twelve months must be charged off or reduced in value after appraisement by the state bank examiner and two stockholders. In Washington and California it has been provided that interest, unpaid and accrued, shall not be counted as an asset in calculating net profits.[a] The most elaborate rule for calculating net profits is found in the New York banking law. It reads as follows:

> Interest unpaid, although due or accrued on debts owing to the corporation or banker, shall not be included in the calculation of its profits previous to a dividend, unless such interest be accrued upon loans secured by collaterals as provided by section twenty-seven of this chapter. The surplus profits, from which alone a dividend can be made, shall be ascertained by charging in the account of profit and loss and deducting from the actual profits:
>
> 1. All expenses paid or incurred, both ordinary and extraordinary, attending the management of its affairs and the transaction of its business.
> 2. The interest paid, or then due and accrued, on debts owing by it.
> 3. All losses sustained by it. In the computation of such losses, all debts owing to it shall be included which shall have remained due, without prosecution, and upon which no interest shall have been paid for more than one year, or on which judgment shall have been recovered that shall have remained for more than two years unsatisfied, and on which no interest shall have been paid during that period.

The national-bank act in its original form did not provide any better means of restoring capital when impaired than by restraining the payment of dividends. In 1873, however, it was provided that if the capital of a national bank should be impaired, the shareholders were to assess themselves and repair the deficiency.[b] The same provision had been adopted in New York in 1871,[c] but the

[a] The same conclusion was earlier reached by the courts in California. (People ex rel. Farnum v. San Francisco Savings Banks, 72 Cal., 199.)

[b] Act of March 3, 1873, chap. 290, Stat. L., 603.

[c] N. Y. (1871), chap. 456.

other States have followed this innovation somewhat slowly, chiefly because until recently in only a few of the States were there adequate examinations of the banks.[a] In many of the States, as soon as examinations began, it was found that the capital of some of the banks was grossly impaired,[b] and it was urged that a remedy should be provided.

In general, the state banking legislation has followed the lines of the amendment to the national-bank act, and the stockholders of a bank have been required to assess themselves if its capital is impaired. The banking laws of the following 31 States contain such provisions:[c] California, Colorado, Florida, Georgia, Idaho, Indiana, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Mexico, New York, North Dakota, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

The period allowed for the restoration of capital under the national-bank act is three months.[d] In a consider-

[a] Kentucky is the only State which provides for the restoration of impaired capital by assessment and does not provide for the regular examination of its banks.

[b] For example, see "Report of Bank Examinations in Missouri," 1897.

[c] In Georgia the impairment must amount to 10 per cent and in Louisiana to 25 per cent before an assessment is required. In Missouri and Texas, if the impairment amounts to 25 per cent, restoration must be made in sixty days; if the impairment is less, the supervisors may allow a longer period.

[d] The Comptroller of the Currency in his testimony before the National Monetary Commission recently said: "I think a bank that has an impaired capital ought to be made to make it good at once * * *. It is rather a disgraceful condition of affairs now, and has always been since the national-bank act was passed forty-five years ago, to allow a bank to run along with an impaired capital and still continue to take people's money."—"Suggested Changes in the Administrative Features of the National Banking Laws," 61st Cong., 2d sess., Doc. No. 404, pp. 229–230.

able number of the state banking laws which provide for the assessment of stockholders in case of impairment of capital the period is fixed at sixty days and in a few at thirty days. In the more recent laws, however, no period is specified, the supervisors having power to fix the time, which may vary according to the condition of the bank. Only in Florida and New Mexico is the period allowed as long as under the national-bank act.

The enforcement of that provision of the national banking act which requires the restoration of capital was at first difficult; for frequently some of the stockholders in a bank whose capital was impaired would not pay their assessments, and the other stockholders were forced either to buy their shares or to allow the bank to be placed in the hands of a receiver. It was provided, therefore, by Congress in 1876 that if any shareholder refused to pay his assessment the directors might sell his stock at public auction. The same difficulty has been found in forcing the restoration of capital under the state banking laws.[a] Provisions for the sale of the stock of recalcitrant shareholders have been made, however, only in Indiana, Iowa, New York, Oklahoma, South Dakota, Wisconsin, and West Virginia. In Illinois the state auditor has power to sue stockholders who do not pay their assessments. In New York the superintendent of banks in 1904 reported that he found it impracticable to require the public sale of the stock of delinquent stockholders, because of the danger of thereby starting a run

[a] Report of Superintendent of Banks of New York, 1879, p. xi; Report of the Bank Commissioner of Oklahoma, 1906; Twentieth Annual Report of the Commissioner of Banking of Michigan, 1908, p. xxxviii.

on the bank. The New York legislature in 1905 accordingly made provision for the private sale of the stock after due notice to the shareholders.[a]

II. Trust Companies.

AMOUNT OF REQUIRED CAPITAL.

In several States the laws make no provision with reference to the amount of capital required for a trust company. In Tennessee, where banks are incorporated on the same terms as ordinary business corporations, trust companies (i. e., banks with trust company powers) may be incorporated in the same way.[b] In Arizona, Nebraska, and Florida there is no legislation specifically providing for the incorporation of trust companies. In all these States, presumably, trust companies may be incorporated under the "business incorporation laws," and the amount of their capital is left to the discretion of their incorporators. In Connecticut, Delaware, New Hampshire, and Vermont trust companies are incorporated only under special acts and the amount of their capital is determined in each particular case by the legislature. In Rhode Island trust companies are incorporated by a board which has power to fix the terms of incorporation, including the amount of capital.

The first general laws for the incorporation of trust companies in the United States required such companies to have a much larger capital than that required for

[a] N. Y. (1905), chap. 649.

[b] In Tennessee trusts may be accepted without bond by banks organized to conduct a banking, savings, and trust business, provided such banks are located in counties of 60,000 to 90,000 population and have a capital of at least $100,000.

banks, but the later legislation shows a distinct tendency in the direction of lowering the requirements in regard to capital. In nearly all of the States, however, the requirement for trust companies is still substantially different from that for state banks. The following table shows the capital required for trust companies, omitting those requirements which are based on the volume of business. In California, Nevada, Nebraska, Rhode Island, and South Dakota the amount of capital required for a trust company depends, as in the case of state banks, either on the amount of deposits or on the amount of loans. The provisions of this kind in these States are identical for banks and for trust companies. Similar provisions with reference to banks in the laws of Kansas, Texas, and Oklahoma do not appear to apply to trust companies.

The smallest permissible capital for a trust company, it will be noted, ranges from $5,000 in North Carolina to $1,000,000 in the District of Columbia. Only in Iowa, North Carolina, Nevada, Oregon, Virginia, and Wyoming may a trust company which carries on a banking business be incorporated with less than $25,000 capital, and the total number of trust companies in these States on April 28, 1909, according to the statistics gathered by the National Monetary Commission, was only fifteen. Nine States permit the organization of trust companies with a capital of $25,000. Three States require a capital of $50,000, and fourteen States require a capital of $100,000; the remaining six require a capital of over $100,000, but of these only two require a capital of over $125,000. The majority of the States, therefore, which

provide that trust companies must have a specified minimum capital do not permit the organization of trust companies with a smaller capital than $100,000.

In a comparison of the amount of capital required for trust companies with that required for state banks, certain of the States which require a minimum capital for trust companies must be omitted. In the District of Columbia, Maine, and Massachusetts there are no state banks; in Arkansas and South Carolina, state banks are not differentiated with respect to capital from ordinary business corporations. The remaining States fall into several groups:

(*a*) In Illinois, Nevada, North Carolina, Oregon, Virginia, and Wyoming the capital required for trust companies is exactly the same as for state banks.

(*b*) In California, Georgia, Kentucky, Montana, New Jersey, Ohio, and West Virginia the requirement is not graded for either trust companies or state banks. The required minimum is larger for trust companies than for state banks.

(*c*) In Colorado, Oklahoma, Maryland, Michigan, New York, and South Dakota the requirement for both banks and trust companies is graded and is higher throughout for trust companies.

(*d*) In Indiana the smallest permissible capital is the same for state banks and for trust companies, but the required capital for trust companies is graded and that for state banks is not. As a result the capital required for trust companies is greater in cities of more than 25,000 population.

(*e*) In Kansas, Minnesota, Mississippi, North Dakota, and Pennsylvania the smallest permissible capital for trust companies is greater than that required for state banks, but the capital required for trust companies is ungraded, while that for state banks is graded. Even in the largest cities, however, the amount of capital required for state banks is not as large as that required for trust companies.

(*f*) In Idaho and Utah the smallest permissible capital is larger for trust companies than for state banks, but the requirements for both state banks and trust companies are graded, and in the larger cities the required capital is the same.

(*g*) In Alabama the smallest permissible capital is larger for trust companies than for state banks, but the requirement for trust companies is graded and that for state banks is not. The result is that in the larger cities the required capital is larger for trust companies.

(*h*) In Texas the smallest permissible capital is larger for trust companies than for state banks, but the requirement for state banks is graded and the requirement for trust companies is not. In cities of more than 20,000 population the capital requirement for state banks is larger.

(*i*) In Wisconsin the smallest permissible capital is larger for trust companies than for state banks, and both requirements are graded. In cities of from 10,000 to 50,000 population the amount of capital required is the same, but in places of over 50,000 the requirement for trust companies is higher.

(*j*) In Louisiana the smallest permissible capital is larger for trust companies than for state banks, but the requirement for state banks is graded and that for trust companies is not. In cities of over 20,000 population the required capital is the same for both.

(*k*) In Washington and Missouri the smallest permissible capital is larger for trust companies than for state banks, and both requirements are graded. In the larger cities the amount of capital required is the same for both.

(*l*) Finally, in the case of Iowa the smallest permissible capital is less for trust companies than that required for state banks, and both requirements are graded. In cities of over 10,000 population the amount of capital required is the same for both.

Certain more general conclusions may now be stated:

1. Only in one State Tex. + Iowa is the smallest permissible capital less for trust companies than for state banks; in six States it is the same; in all the others it is larger.

2. In five States the requirements as to capital are the same for trust companies and state banks in large and small cities alike. In eighteen States they are higher throughout for trust companies; in one State they are the same for banks and trust companies in the smaller places, but larger for trust companies than for banks in the larger places; in the remaining States the capital required is larger for trust companies in the smaller places, but the same in the larger places.

In the laws of those States in which the banking powers of the trust companies are well developed there is a certain similarity in the relation between the capital required for

trust companies and that required for state banks. The smallest permissible capital for trust companies is practically always larger than that required for state banks, and if neither requirement is graded the minimum capital for trust companies is greater in towns and cities of all sizes. Where the capital is graded for either trust companies or banks, the required capital for trust companies ordinarily is greater in places of all sizes; but the difference between the two requirements is not so great in the larger places.

PAYMENT OF CAPITAL.

The same reasons for requiring the payment of capital are influential in the case of trust companies as in the case of banks. In Colorado, the District of Columbia, Illinois, Idaho, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Mississippi, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Washington, and Wyoming the subscribed capital must be fully paid. In over half of these States it must be paid before business is transacted. In the District of Columbia, Idaho, Kentucky, Michigan, North Carolina Ohio, and Wyoming one-half of the capital must be paid before the transaction of any business and the remainder within a specified period, varying from five months to a year. In Kansas only 20 per cent need be paid in at the beginning and the remainder within six months. In North Dakota and Mississippi a specified sum must be paid in, and the remainder within specified periods, in the one case five months and in the other two years. In Nevada 80 per cent must be paid at the beginning and the remainder in two years.

In many of the States the trust-company law has not yet, however, been as fully differentiated from the "business incorporation law" as has the state-bank law. In Pennsylvania, for example, subscribers to the capital stock of banks have been required for many years to pay their subscriptions in cash. Trust companies, on the other hand, are incorporated under the "business incorporation law," and stock can be paid for with personal and real property. The commissioner of banking in several recent reports has recommended that the law should be changed.[a]

In Alabama, Arkansas, California, Georgia, Indiana, Louisiana, Maryland, Minnesota, Montana, New Mexico, Pennsylvania, South Carolina, Utah, and West Virginia the laws provide for paid-up capital of a specified minimum amount, but no provision is made that the capital shall be fully paid. In Missouri the subscribed capital must be at least $100,000; one-fourth of the authorized capital must be subscribed and one-half of the subscribed capital must be paid in. In Wisconsin there is provision for a minimum capital, but none for its payment. In those States where trust companies are chartered exclusively by special act—Connecticut, Delaware, New Hampshire, and Vermont—the payment of the capital stock is ordinarily provided for in the act of incorporation.

In all the States requiring a specified capital for trust companies, except Alabama, Arkansas, California, Florida, Georgia, Idaho, Indiana, Kansas, Nevada, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, West Virginia, and Wisconsin,

[a] Report of the Commissioner of Banking of Pennsylvania, 1906, Part I, pp. 9 and 10.

it is specifically provided that the capital of trust companies shall be paid in only "in cash" or "in lawful money." In a considerable number of the States whose trust-company laws do not contain such provisions, the supervisors will allow payment for capital stock to be made only in cash.

SURPLUS.

The accumulation of a surplus is not required in so many States for trust companies as for banks. In Indiana, Kentucky, Louisiana, Minnesota, Nebraska, New York, Oklahoma, and Pennsylvania banks are required to accumulate a surplus, but trust companies are not. In Nebraska, however, trust companies do not do a banking business. In New Mexico trust companies must set aside a surplus, but banks need not. In Maine and Massachusetts, where there are no state banks, trust companies must accumulate a surplus. In the other States the provisions with regard to a surplus are identical for banks and trust companies.

IMPAIRMENT OF CAPITAL.

In the matter of the restoration of impaired capital, the laws governing trust companies have been almost completely assimilated to the laws governing state banks. In a few States, however, where specific provision has been made for the restoration of the impaired capital of banks, the trust-company law does not contain such provisions. Such is the case in Florida, Indiana, Nebraska, and Oklahoma. In Florida there are no laws specifically relating to trust companies, and in Nebraska trust companies do

not do a banking business. In Massachusetts and Maine,[a] where there are no state banks, there are specific provisions for the restoration of the capital of trust companies. In Vermont, where also there are no state banks, there is no definite provision for the restoration of capital of trust companies; but it is possible that, under certain provisions which give the supervisors power to ask for a receiver in case a trust company is conducting business in an "unsafe and unauthorized manner," the restoration of impaired capital may be forced. In the District of Columbia the provisions of the national-bank act concerning the restoration of impaired capital have been extended to trust companies.

[a] In Maine the bank examiner, if he finds the capital of a trust company impaired, may file a complaint with an equity court, which orders an assessment made upon such stock. If the assessment is not paid within sixty days, the stock of any shareholder who is in default may be sold at public auction.

CHAPTER III.

LIABILITY OF STOCKHOLDERS.

It is a practically universal rule of American corporation law that unpaid subscriptions to capital stock constitute a trust fund for creditors, and may be collected by the assignee or receiver of the corporation. Since, however, as has already been shown, the laws in nearly all the States require that stock in a banking corporation shall be fully paid up either before the corporation begins business, or within a short time after, the liability of stockholders for unpaid subscriptions has become of little importance so far as banking corporations are concerned.

Formerly, in a considerable number of States, banks were required to have a specified capital, only a part of which had to be paid in. Requirements of this kind appear to have been designed to impose on shareholders inbanks of small capital a liability for unpaid stock subscriptions. In Wisconsin, for instance, until recently no bank might be organized with a smaller subscribed capital than $25,000, but only $15,000 was required to be paid in. The stockholders of a bank with a paid-in capital of $15,000 were, therefore, liable for a sum equal to two-fifths of the amount of their shares in the event of the bank's becoming insolvent. Similar provisions were contained in the Missouri "savings bank" law enacted in 1864, in the Kansas law of 1868, and later in the Washington and West Virginia banking laws. The only banking laws in which such provisions are found at

present are those of Georgia and Alabama. Several of the trust-company laws, now in force, as has been noted above, contain similar provisions.[a]

While the liability for unpaid stock subscriptions has been decreasing in importance along with the gradual differentiation of banking corporations from ordinary business corporations, "statutory liability," i. e., the liability of stockholders beyond the amount of the capital stock held by them, has been of constantly increasing importance. The earlier American laws for the regulation of banking proceeded in this respect as in others on the principle that it was the note holder who was to be protected. The antebellum banking laws of Maine[b] and Massachusetts,[c] for example, imposed a statutory liability only for the benefit of the creditors who held the notes of the bank. In somewhat later legislation the liability was for the protection of all creditors.[d] By the time of the civil war the liability of shareholders in banks had assumed in a considerable number of States its present form—a liability to the amount of the stock in addition to the liability for unpaid stock subscriptions.

With the practical prohibition of the issue of state bank notes in 1866 and the consequent decrease in the number of state banks, the liability of stockholders in state banks became in nearly all of the States, except where an additional liability was imposed by the constitution, the same as that of stockholders in ordinary

[a] See above, p. 71.

[b] Me. (1841), chap. 1, sec. 8.

[c] Mass. (1828), chap. 96, sec. 13.

[d] Constitution of N. Y. (1846), Art. VIII, sec. 7; Pa. (1850), P. L. 477, sec. 32.

business corporations. Since 1880, however, provisions imposing an additional liability on the stockholders of banking corporations have been placed in the banking and trust-company laws of nearly all the States in which state banks or trust companies have assumed any great importance.

In a small number of States the state constitution provides that stockholders in corporations shall be chargeable only for unpaid stock subscriptions. Such States are Alabama,[a] Ohio,[b] Oregon,[c] Missouri,[d] and Nevada.[e] The supervisors of state banks of Missouri and Nevada have recently urged that constitutional amendments be submitted permitting the imposition of an additional liability on the stockholders of banking corporations.[f]

In a few States and Territories in which there are no constitutional inhibitions the legislatures have not seen fit to impose any additional liability on stockholders in banking corporations. These States and Territories are Arizona, Arkansas, Louisiana, Mississippi, New Hampshire, New Jersey, Rhode Island, Tennessee, and Virginia. In Connecticut and Delaware there are no general laws relating to the statutory liability of stockholders; but since banks and trust companies are incorporated by special acts, the legislature may impose an additional liability by provision in the charter.

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[a] Alabama constitution (1901), sec. 236.

[b] Ohio constitution (1851), Art. XIII, sec. 3, amended 1903.

[c] Oregon constitution (1857), Art. XI, sec. 3.

[d] Missouri constitution (1875), Art. XII, sec. 9.

[e] Nevada constitution (1864), Art. VIII, sec. 3.

[f] Seventh Biennial Report, Bank Examination, Missouri, 1898, p. 12; First Annual Report of the State Bank Examiner, Nevada, 1909, p. 10.

In all the remaining States and Territories where state banks are incorporated, an additional or statutory liability is imposed on stockholders.[a] The list includes California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Montana, Nebraska, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, South Carolina, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming. In all the States imposing the liability except two it is a double liability (i. e., for an amount equal to the amount of stock in addition thereto); but in California the stockholders in all corporations are individually liable for their proportionate part of the debts of the corporation,[b] and in Colorado the stockholders in banks are liable for an amount equal to twice the amount of their stock. In Michigan, South Carolina, and Georgia the liability is for the benefit only of depositors. The same additional liability in nearly all of the States in which it is imposed on the stockholders of state banks has been imposed also on the stockholders of trust companies. The exceptions are Florida, Minnesota, Nebraska, North Dakota, Oklahoma, and Pennsylvania. In Florida there

[a] The double liability is imposed in a considerable number of these States by provisions in the state constitutions as follows: Illinois constitution (1870), Art. XI, sec. 6; Indiana constitution (1851), Art. XI, sec. 6; Maryland constitution (1867), Art. III, sec. 39; Nebraska constitution (1875), Art XI, sec. 7; New York constitution (1894), Art. VIII, sec. 7; South Carolina constitution (1895), Art. IX, sec. 18; South Dakota constitution (1889), Art. XVIII, sec. 3; Texas constitution (1876), Art. XVI, sec. 16, amdt. 1904; Utah constitution (1895), Art. XII, sec. 18; Washington constitution (1889), Art. XII, sec. 11; West Virginia constitution (1872), Art. XI, sec. 6.

[b] California constitution (1879), Art. XII, sec. 3.

are no specific provisions for the incorporation of trust companies, and in Nebraska trust companies do not do a banking business. In Oklahoma the stockholders of a trust company are liable for twice the amount of their unpaid stock subscription. In the District of Columbia, Maine, Massachusetts, and Vermont, where there are no state banks, a double liability is imposed on the stockholders of trust companies.

In the larger number of the States and Territories the liability is a proportionate one, and the stockholders are responsible "equally and ratably and not one for another." This is the law in California, Colorado, Florida, Georgia, Iowa, Kentucky, Maine, Massachusetts, Maryland, Michigan, Minnesota, Montana, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, Vermont, and Wisconsin. In a smaller number of States and Territories the stockholders are liable "jointly and for each other." This is the law in the District of Columbia, Idaho, Illinois,[a] Indiana, Kansas, Nebraska, Oklahoma, South Carolina, South Dakota, Texas, Utah, Washington, West Virginia, and Wyoming.

The imposition of the statutory liability on the stockholders of state banks and trust companies has not proved of great service as a protection to bank creditors

[a] The Illinois bank act of 1887 imposed a double liability "equally and ratably." In Dupree *v.* Swigert (127 Ill., 494) the supreme court of Illinois held that such a limitation of the liability imposed by the constitution was void, and in 1889 the legislature amended the bank act in such a way as to make it conform to the constitution. Similarly in South Dakota a law limiting the liability of stockholders to a proportionate share of the debts was held in conflict with the constitution. (See Union National Bank *v.* Halley (19 S. Dak., 474).)

against loss. As yet little has been accomplished in the way of making the enforcement of the liability effective, but the steps which have been taken in this direction in a few States indicate the difficulties experienced in the enforcement of the liability.

1. In the first place, it has been held by the courts in nearly all of the States that, in the absence of statutory provisions to the contrary, the liability is directly to the bank's creditors and not to the bank itself.[a] In this respect it differs from an unpaid stock subscription, which is held to be an asset of the bank, and collectible by the bank or by its assignee or receiver. There are two distinct and opposing lines of decisions as to the method by which the creditors must proceed.[b] In one set of cases it has been held that the proper form of proceeding is by an action at law. In such a suit a creditor sues for himself some one or more of the stockholders of the bank. The creditor who first brings suit obtains a favored position with respect to others.[c] The

[a] In Iowa, Nebraska, North Carolina, and Washington, however, the courts have held that independently of any statutory provision the receiver may enforce the liability. State ex rel. *v.* Union Stock Yards State Bank (103 Iowa, 553); Farmers' Loan and Trust Company *v.* Funk (49 Nebr., 353); Smathers *v.* Western Carolina Bank (135 N. C., 410); Wilson *v.* Book (13 Wash., 676). See also Conway *v.* Owensboro Savings Bank and Trust Co. (165 F., 822).

[b] The two sets of cases may be partially reconciled in that the equitable remedy has been held to be the proper one where the liability is proportionate, whereas the law action has been ordinarily held proper where the liability has been to the full amount. Even in the latter case, however, it has been held in some cases that the proper remedy is a suit in equity.

[c] Bank of Poughkeepsie *v.* Ibbeston (24 Wend., 473).

chief objection to the law action is that the proceeds of the liability should be divided among all creditors, and one should not be permitted to get, by superior diligence, a more than proportionate share of whatever may be collected. In a struggle for priority, creditors for small amounts fare badly. Another objection to the remedy at law lies in the fact that suits are multiplied, since each creditor must maintain a separate suit. In a very early case in Massachusetts,[a] it was held that the suit at equity was the proper proceeding, because in this way all parties could be joined in one action, and the proceeds might be distributed proportionately.

The objection to leaving the liability to be enforced by creditors, either by a law action or by proceedings in equity, is that separate proceedings from the receivership action must be maintained.[b] The liability of the stockholders can be determined in the receivership action more expeditiously and at less expense.[c] The New York

[a] Crease *v.* Babcock (10 Metcalf, 125).

[b] The Ohio supreme court in 44 Ohio State, 318, said: "By reason of the great number of stockholders, the frequent transfers of stock, the decease of parties, and of other causes, delays, vexatious, expensive, and almost interminable seem to be inevitable in such proceedings, so much so that such liability has grown to be looked upon as furnishing next to no security at all for the debts of the bank."

[c] The supreme court of Washington, in Watterson *v.* Masterton (15 Wash., 511), said: "If any proof had been needed that the method pointed out in that opinion [Wilson *v.* Book, 13 Wash., 676] for the enforcing the contingent liability [i. e., by receiver] was demanded by public policy, and was in the interest of all classes interested in the bank, such proof is furnished by the record in this case. After great expense, and the waste of much time for the purpose of establishing the facts necessary to authorize the enforcement of the liability in behalf of creditors against stockholders, such creditors were in no better condition than the receivers were before they had commenced this proceeding."

banking act of 1849 gave the receiver of an insolvent bank the power to enforce the liability. The same power was conferred in Massachusetts [a] and Maine [b] by somewhat later statutes. Under the provisions of the national-bank act the receiver of an insolvent bank, under the direction of the Comptroller, enforces the individual liability of the stockholders. In nearly all of the States, however, the liability was until very recently enforceable exclusively by the creditors. It has been only in recent years that any great improvement has been made in this respect. In this improvement the tendency has been to follow the early line of development, and to transfer to the receiver the right to collect the liability.[c] In about two-thirds of the States which impose a double liability on the stockholders of banking corporations, the liability is now collectible only by the receiver.

2. Unless there are statutory or constitutional provisions to the contrary, it is a general rule of law, with few dissenting decisions, that the statutory liability is a secondary and not a primary liability. The stockholder is not responsible to the creditor as a principal, but only after the assets of the corporation have been exhausted. The liability can not be enforced until it has been ascer-

[a] Mass. (1860), chap. 167, secs. 1, 2.

[b] Me. (1855), chap. 164.

[c] Such laws and the years of their passage are: D. C. (1901); Idaho (1905); Ill. (1907); Iowa (1897); Kans. (1897); Me. (1905); Mass. (1905); Md. (1910); Mich. (1889); Minn. (1895); Nebr. (1895); N. Mex. (1903), applicable only to trust companies; N. Y. (1897); Okla. (1897); S. Dak. (1909); Tex. (1909), applicable only to guaranty banks; Wis. (1903).

tained, and it is ordinarily necessary that the affairs of the insolvent corporation shall be entirely settled before the amount due can be determined. Frequently therefore a considerable time must elapse before any action can be taken which will bind the property of the shareholder. In the meantime it frequently happens that because of the death or insolvency of the shareholder the liability can not be collected.[a]

An efficient way of meeting this difficulty would be to make the liability a primary one, accruing immediately on the insolvency of the bank. There is, however, some reason to object to the adoption of such a plan. When a bank failure occurs, there is always a check to the business of the community. To proceed at once to enforce the liabilities of stockholders would probably prove an impediment to the rapid recovery of normal economic activity.

Despite the inconvenience of treating the liability as primary there has been some movement in that direction. Thus, in Nebraska it was enacted in 1895 that "such liability may be enforced whenever such banking corporations shall be adjudged insolvent, without regard to the assets of such insolvent bank being sufficient to pay all its

[a] The same difficulty in the enforcement of the liability was evidently felt in the antebellum systems. The appointment of a receiver in Maine constituted a lien on the real estate of shareholders to the amount of their liability. Under the antebellum law in New York applicable to banks of issue the receiver was required to realize as far as possible on the assets; but after six months he was to proceed against the stockholders. If the sale of any assets was postponed beyond that time by the order of the court, the stockholders were to look to such assets for reimbursement if it proved that these assets of the corporation together with the amount obtained from the stockholders was more than sufficient to pay the debts of the bank.

liabilities."[a] In Kansas under an act passed in 1909 the bank commissioner may, in his judgment, enforce the liability immediately. In the interpretation of the Iowa statute [b] the supreme court of that State has held that the liability created is primary; that the exhaustion of assets is not necessary, but that the assessment may be for the full amount, and any surplus remaining after complete settlement of the trust may be refunded.[c]

The tendency, however, appears to be to follow, in the collection of the liability, the method laid down in the national-bank act. As is well known, the Comptroller of the Currency has power, as the liquidation of an insolvent bank proceeds and it becomes clear that the assets of the bank are insufficient to meet its liabilities, to levy an assessment on the stockholders without waiting for the exhaustion of the assets. In several of the States where

[a] Nebr. (1895), chap. 8, sec. 30. On account of constitutional provisions peculiar to Nebraska, this section has been held unconstitutional. (State *v.* German Savings Bank, 50 Nebr., 735.) The Nebraska court recognized, however, the motive leading to the passage of the act. It said: "The policy of the statute is to afford a speedy and somewhat summary remedy for creditors of insolvent banks, and to enable the receiver for their benefit to promptly enforce all liabilities of stockholders; * * * the danger attending upon any process requiring securities to be immediately sold, often on a falling market, or at a sacrifice, or if that danger be avoided the still greater danger of delaying resort to proceedings against stockholders until such a time that through death or insolvency the remedies become ineffectual. * * * We may further acquiesce in the position of counsel that for the effective winding up of insolvent banks and the protection of depositors a remedy against stockholders should be permitted before, by the slow process of liquidation, other assets shall have been exhausted."

[b] Iowa (18 G. A.), chap. 208.

[c] The court said in the case of State ex rel Stone, Attorney-General *v.* Union Stock Yards Bank: "The liability for the payment to create the fund is not made to depend on the application of the fund, but on the fact of insolvency. The liability is primarily for the full amount, subject to such an interest as will entitle him to any balance unexpended." (70 N. W., 772.)

receivers have power to maintain an action for the collection of the liability, the courts have held, either by way of interpretation of the statutes or as declaratory of general legal principles, that proceedings may be begun against stockholders and an assessment levied without waiting for the conversion of all the assets. Such is the law in Michigan,[a] North Carolina,[b] Washington,[c] and Wisconsin.[d] In a considerable number of other States where the subject has not been passed upon judicially the statutes appear capable of the same construction.

3. The final difficulty in enforcing the statutory liability of stockholders in state banks and trust companies is due to the impossibility of preventing transfers of stock with a view to evading the liability.

It is a general principle of law that a holder of stock who transfers to an irresponsible party, with knowledge that the bank is in a failing condition, will be held responsible for the statutory liability; but the difficulty is to bring home to the transferrer knowledge of insolvency. In several of the States an attempt has been made to prevent stockholders from thus escaping the liability by enacting laws extending the liability for a period beyond the time of transfer. Thus in Wisconsin and Montana a stockholder's liability continues for six months after the transfer; in Minnesota, New Mexico, North Dakota, Texas, and South Dakota for a year, and in Kentucky, for two years.

[a] Foster *v.* Row (120 Mich., 1).
[b] Smathers *v.* Western Carolina Bank (135 N. C., 410).
[c] Bennett *v.* Thorne (36 Wash., 253).
[d] Booth *v.* Dear (96 Wis., 516).

Moreover, the transferrer, even if the transfer was made with knowledge of insolvency and to an irresponsible party, is probably not liable in any of the States for the debts of the bank contracted after the transfer. This doctrine has been declared recently by the Supreme Court of the United States in the case of McDonald *v.* Dewey (202 U. S., 510). The same rule has been applied in several of the state courts. In California, Illinois, Iowa, Montana, Nebraska, New Mexico, and West Virginia the liability by statute or constitutional provision is only for the debts of the bank accruing before transfer. The debts of a bank, even of an insolvent bank, change very rapidly, and it is difficult to work out a practicable rule for charging a stockholder who has transferred his stock.[a] In several of the States, also, which have extended the liability for a period beyond the time of transfer, the liability of the stockholder is by the terms of the law only for debts accruing during the time the stockholder held the stock. In at least one of these States, too, where the statute is not explicit, it has been held by the courts that the liability of the stockholder continues only for the debts of the bank contracted prior to the transfer.[b]

[a] See "Suggested Changes in the Administrative Features of the National Banking Laws," 61st Cong., 2d sess., Doc. No. 404, p. 249.

[b] Harper *v.* Carroll (64 N. W., 145).

CHAPTER IV.

RESTRICTIONS ON DISCOUNTS AND LOANS.

EXCESSIVE LOANS.

The desirability of some legal limitation on the extent of the liability to a banking institution which any one person, firm, or corporation may incur is largely due to the fact that, since the American banking system is a system of independent banks, the resources of many of the banks are necessarily small in comparison with the needs of some of their customers for loans. A large manufacturing concern located in a small town may very well be able to use all the assets of the local bank. If the local bank were the branch of a larger bank, the mere fact that a large loan was wanted by a manufacturer in a small town would be of no significance, since the amount of the loan would be small compared with the total assets of the bank.

Moreover, in many banks a controlling interest is held by a person, firm, or corporation that is actively engaged in other business enterprises. Such control is far more likely to be found in small banks than in large, and in a system of independent banks than in one of branch banks. One consequence of the close identification of interests thus brought about between banking and other business enterprises is the probability that loans will be made directly or indirectly to some one borrower to an amount larger than a proper distribution of risks would justify.

The national-bank act in its original form provided that the total liabilities to any national bank of any person, company, corporation, or firm for money borrowed should

not exceed one-tenth of the amount of the paid-in capital stock of the bank. The liabilities of the members of a firm or company were to be included in the liabilities of the firm or company. It was provided, however, that "the discount of bills of exchange in good faith against actually existing values and the discount of commercial or business paper actually owned by the person negotiating the same" should not be considered as money borrowed. This section of the national-bank act remained unchanged until 1906, when it was amended so as to per mit a single liability to be contracted equal to one-tenth of the capital and surplus, instead of one-tenth of capital only, but it was also provided that the liability should not, in any case, exceed 30 per cent of the capital stock.

State banks.—In all the States and Territories which incorporate state banks, except Arizona, Arkansas, Delaware, Florida, Indiana, Mississippi, New Mexico, Pennsylvania, Tennessee, and Washington, the banking laws contain provisions limiting in some manner the amount which may be borrowed by any one person, firm, company, or corporation.[a] This legislation has to a large extent been modeled after the provision in the national-bank act, but the variations from that provision are important and significant of the difficulties found in the enforcement of the provision. These variations, or the chief of them, may be grouped under two heads, according

[a] The banking laws of the majority of the States follow the phraseology of the national-bank act in imposing the limitation on "total liabilities for money borrowed." In some of the States the laws explicitly include all liabilities, "whether as principal, indorser, or surety." In a smaller number of States the limitation is on the "amount of loans to any person, firm, or corporation."

as they relate to (*a*) the amount of liability, and (*b*) the excepted classes of liabilities.

(*a*) The amount of the liability which may be incurred by any one person, firm, or corporation is stated in all the state banking laws in the form of a percentage of the capital of the bank, or of the capital and surplus, or, finally, of the capital, surplus, and undivided profits. The amounts permitted by the state banking laws may be tabulated as follows:

I. Ten per cent of—
- (*a*) Capital............New Hampshire and North Carolina.[a]
- (*b*) Capital and surplus..California, Georgia, New Jersey, New York, Rhode Island, Michigan, and South Carolina.
- (*c*) Capital, surplus, and undivided profits..Alabama and Connecticut.

II. Fifteen per cent of capital and surplus..................Illinois, Kansas, Minnesota, North Dakota, and Utah.

III. Twenty per cent of—
- (*a*) Capital............Iowa and Oklahoma.
- (*b*) Capital and surplus..Colorado, Kentucky, Maryland, Montana, Nebraska, Ohio, West Virginia, and Wyoming.
- (*c*) Capital, surplus, and undivided profits..Louisiana.

IV. Twenty-five per cent of—
- (*a*) Capital and surplus..Missouri, Oregon, South Dakota, and Texas.[b]
- (*b*) Capital, surplus, and undivided profits..Idaho.

V. Thirty per cent of capital and surplus..............Wisconsin.

[a] In North Carolina the limitation of the amount of a single liability applies only to banks with a capital of less than $100,000.

[b] Under the Texas banking law surplus can only be included if it amounts to 50 per cent of capital.

Exact comparisons with the provision in the national-bank act are not possible for all the States because in some the limitation is in the form of a percentage of capital only. In only two of the States, New Hampshire and North Carolina, is the amount which may be loaned certainly less than under the national-bank act. In two other States, Iowa and Oklahoma, the limit on a single liability is 20 per cent of capital, which is for most banks far more liberal than the provision in the national-bank act, although for banks with a surplus greater than capital it is less liberal. In the banking laws of seven States the limit on the amount of a single liability is the same as under the national-bank act. The banking laws of all the other States which contain provisions with regard to the amount of a single liability permit a larger amount to be loaned on a single liability than is permitted by the national-bank act.

The inclusion of surplus with capital as a basis for computing the allowable amount of a single liability has for a considerable number of years been permitted by the state banking laws. In only four of the state banking laws which contain provisions with regard to the amount of a single liability is the limitation, at present, in the form of a percentage of capital only. The reasons advanced in favor of including surplus are, in the first place, that surplus is for all practical purposes capital, and in the second place that thereby the banks are induced to build up a large surplus, since many of the banks find it desirable on occasion to make large loans on

a single liability.[a] Some of the state banking laws, it will be noted, permit undivided profits also to be included in the sum against which the percentage is reckoned.

(*b*) As has already been noted, the national-bank act provides that discounts of "bills of exchange drawn against actually existing values" and "commercial or business paper actually owned by the person negotiating the same" shall not be considered as money borrowed. The same exceptions are made in practically all the state banking laws.[b] But in many of these laws additional exceptions are also made. The most important of these are the exceptions of loans on real estate mortgages, of loans on bills of lading and warehouse receipts, of loans on collateral security, and, finally, of loans approved by a vote of the directors.

In Iowa a bank may loan on a real estate mortgage of specified kind an amount equal to 50 per cent of its capital, although the limit on a single liability otherwise is 20 per cent of the capital. In Minnesota a bank may, under similar conditions, loan an amount equal to 20 per cent of its capital and surplus, although the limit on a single

[a] In his report for 1909 the secretary of the Nebraska banking board said: "This department has repeatedly recommended an amendment to the present banking act permitting banks to loan to any person, partnership, or corporation 20 per cent of the unimpaired capital and surplus, instead of 20 per cent of the capital only, as now permitted. This would encourage a building up of a surplus fund, which is always a protection to the capital invested, fortifying against its impairment and strengthening the integrity of the bank."

[b] In New York the loans to any person, firm, or corporation, including discounts of bills of exchange drawn in good faith against actually existing values and commercial or business paper actually owned by the person negotiating the same, must not exceed 25 per cent or 40 per cent of capital and surplus, according to the population of the city or town in which the bank is located.

liability otherwise is 15 per cent. In Kentucky loans on real estate mortgage may be made without restriction as to amount, except that the value of the real estate, above all other incumbrances, must be more than equal to the amount of the mortgage. Similarly, in Michigan, Ohio, and Oregon real estate loans are not counted as part of the liability of any person, firm, or corporation.[a]

In some of the Middle Western, Western, and Pacific States, provision has been made for excepting loans made on the security of evidences of ownership of commodities. In Minnesota and Missouri loans on warehouse receipts are excepted if the value of the products covered by the receipts exceeds by at least 10 per cent the amount of the loan, and if the products are insured in favor of the bank. Loans made on bills of lading and warehouse receipts are excepted, also, under the banking laws of California, Colorado, Idaho, Montana, North Dakota, and Oregon.

In a third group of States provision is made more broadly for excepting loans which are secured. In some States the exception is to any amount. In Alabama, for instance, loans "amply secured by good collateral" are excepted. In Georgia loans which are "amply secured by good security" are excepted; in Idaho loans secured by "personal property;" in Louisiana, Michigan, and New Jersey those secured by collateral. Similarly, in Colorado loans secured by collateral having a market value in excess of the amount of the loan are excepted. In Michigan the collateral must be of certain specified kinds, and

[a] In several of these States there are limitations on the total amount which may be loaned on real estate, which in effect place a limit on the amount of any single loan on real estate. See below, p. 101.

in New Jersey it must have a value of 10 per cent more than the amount of the loan. In certain other States a limit is placed on the amount of secured loans which are excepted. In California the liability of any one person, firm, or corporation is limited to 10 per cent of capital and surplus, but an additional amount equal to 15 per cent of capital and surplus may be loaned on security worth at least 15 per cent more than the amount of the loan. In Connecticut the liability of any one person, firm, or corporation is limited to 10 per cent of capital, surplus, and undivided profits, but the liability may amount to 20 per cent of capital, surplus, and undivided profits if the loans are secured by collateral whose market value is 20 per cent more than the amount loaned. Similar provisions are found in the banking laws of Kentucky, New York, Wisconsin, and Maryland. In Wisconsin and Maryland, however, not only must the additional amount be secured by collateral, but the loan must be approved by a vote of the directors.

In a fourth group of States the restriction on the amount which may be loaned to any one person, firm, or corporation may be partially or entirely removed by a vote of the directors of the bank. In South Carolina, for instance, a single liability is restricted to an amount equal to 10 per cent of capital and surplus, but the board of directors may, by a two-thirds vote, suspend the limitation on loans to any one borrower. Similar provisions are found in Georgia and Virginia. Of less liberal character is the provision in Michigan, where the single liability is restricted to an amount equal to 10 per cent of capital and

surplus, but the directors may, by a two-thirds vote, allow a single liability to be increased to an amount equal to one-fifth of capital and surplus.

From this survey of the provisions in the state banking laws, it is clear that except in a very few States the state banking laws are far more liberal than the national-bank act. In many of the States the restriction on such loans was originally the same as that in the national-bank act. The great difficulty experienced in enforcing the provision has been chiefly responsible for its gradual relaxation. The state bank supervisors have uniformly recommended changes which would permit larger loans rather than the removal of all restrictions on the amount of single liabilities.

In addition to the limitations on the liability of any one person, firm, or corporation, limitations have recently been imposed in several States on the amount of any one loan, irrespective of the amount of the liability of the persons, firms, or corporations responsible therefor. In his report for 1907 the New York superintendent of banks thus explained the desirability of such a provision:

> Loans of an objectionable character have been made in excess of the amount permitted by law upon the ground that the responsibility for the payment of the obligation rested upon several individuals. Such loans are frequently in the form of underwritten loans, and are based on underwriting agreements providing for their repayment through divided individual responsibility, and not on the joint and several obligation of the borrowers.
>
> Generally the obligation of the underwriter is to purchase his proportionate share of the securities held as collateral to the loan and meantime to guarantee a pro rata proportion of the aggregate.

The method of borrowing is not objectionable in itself, and as a form of undertaking for banks or trust companies is criticisable only in so far as it has become a common method for financing new and untried enterprises.

Restrictions might more properly be laid upon the character of the collateral in such loans than upon the form of the obligation, but because of the common use of the underwritten loan in the financing of undemonstrated projects it would seem wise to limit the amount of any such loans upon the securities of one corporation to 25 per cent of the capital and surplus of the bank or trust company. * * *

A feature of the underwritten loan is the long term for which it is made. It has been found that those availing of this form of borrowing are in many cases more susceptible to change of credit than those interested in business enterprises of an established character. Therefore, it would seem proper that no such loans be made for a longer period than one year.

The New York special commission on banks in 1907 made a similar recommendation, and in 1908 the New York legislature enacted the following law:

No loans shall be made by any bank or trust company upon the securities of one or more corporations the payment of which is undertaken in whole or in part severally but not jointly by two or more individuals, firms, or corporations—

(*a*) If the borrowers or underwriters be obligated absolutely or contingently to purchase the securities, or any of them, collateral to such loan, unless the borrowers or underwriters shall have paid on account of the purchase of such securities an amount in cash or its equivalent equal to at least twenty-five per centum of the several amounts for which they remain obligated in completing the purchase of such securities;

(*b*) If the bank or trust company making such loans be liable directly, indirectly, or contingently for the repayment of such loans or any part thereof;

(*c*) If its term, including any renewal thereof, by agreement, express or implied, exceed the period of one year;

(*d*) Or to an amount under any circumstances in excess of twenty-five per centum of the capital and surplus of the bank or trust company making such loan.

Similar provisions were inserted in the Rhode Island banking law in 1908 and in the California banking law in 1909.

Trust companies.—In nearly all of those States in which trust companies have acquired full banking powers the provision limiting the amount of any single liability applies to both banks and trust companies. In only one State or Territory—New Mexico—is there such a provision for trust companies and none for state banks. In a few States—Kansas, Michigan, Minnesota, Missouri, Montana, Oklahoma, New Jersey, Nebraska, and Wisconsin—there are limitations on the amount of a single liability for banks, but none for trust companies. In Nebraska trust companies do not do a banking business, and in several of the other States in the list there are restrictions on the powers of trust companies to do a banking business. These restrictions in several of the States forbid trust companies to discount or buy commercial paper, and confine them to loans on real estate and on collateral securities. Where restrictions of this kind exist, the need for limitation of the amount of any single liability is obviously less. In two States—Ohio and South Dakota—the provisions relating to a single liability are somewhat different for banks and for trust companies, but the differences do not appear to be significant.

In those States which incorporate trust companies but not state banks, the limitations imposed on the liabilities of any one person, firm, or corporation are of essentially the same character as those imposed in other States on state banks and trust companies. Under the

Massachusetts trust-company law, a single liability must not exceed an amount equal to 20 per cent of capital and surplus, if the trust company has a capital of $500,000 or more, and 20 per cent of capital if the trust company has a capital of less than $500,000. The ordinary exceptions of certain kinds of bills of exchange and commercial paper are made. In Maine a trust company may not loan to a person, firm, or corporation an amount equal to more than 10 per cent of its capital, surplus, and undivided profits, unless the loan is approved by a majority of the investment board of the bank, or secured by collateral. Loans in excess of 25 per cent of capital, surplus, and undivided profits must be similarly approved, and must be secured by collateral which in the judgment of a majority of the investment board is of a value equal to the excess of the loan above 25 per cent of capital, surplus, and undivided profits. The ordinary exceptions of certain kinds of bills of exchange and commercial paper are made.

In Vermont, however, the restrictions on a single liability are somewhat peculiar. Loans to any one person, firm, or corporation must not exceed 5 per cent of deposits, and in no case must such a loan amount to more than $30,000. If the loans are entirely on personal security, they must not exceed $10,000, until deposits amount to $1,000,000, after which they may be increased by 1 per cent of the deposits in excess of $1,000,000. Loans on United States bonds and municipal bonds are excepted, but the ordinary exceptions of certain kinds of bills of exchange and commercial

paper are not made. The peculiar character of these provisions is due to the assimilation in Vermont of the regulation of the trust company to that of the savings bank. The restrictions noted above are also imposed in that State on savings banks. Under the trust-company law for the District of Columbia, no limitation is imposed on the amount of a single liability.

LOANS TO DIRECTORS AND OFFICERS.

In almost all of the banking institutions of the United States the directors or a part of them are actively engaged also in other business enterprises; and in many cases they borrow from the banks or trust companies in which they are directors. Moreover, in some banks one or two of the directors own a controlling interest, and are at the same time large borrowers. The possibility, in such cases, that larger loans may be made than the credit of those directors warrant is very considerable. The following extract from the report for 1909 of the treasurer of Georgia is illustrative of conditions which are not infrequently found:

In some instances, upon examination of the reports of the bank examiner, I was absolutely astounded to discover that the entire capital stock and surplus had been used by the directors of the banks, and my astonishment was intensified when I found that there was no law to prevent it. It is contrary to the old banking laws, but the new act provides that no director shall borrow in excess of a certain amount except upon certain conditions. When these conditions are complied with they can then borrow all the money the bank has and not violate any law. It never occurred to me, however, that directors of a bank should be authorized or justified in using the entire capital and surplus of a bank to promote their own individual enterprises to the exclusion of others who might come in competition with them. I have also been astonished to find that

the stockholders of banking institutions would select a board of directors who had a very small per cent of the stock in the bank and leave all matters connected with the bank entirely in their control. While the stockholders have a certain protection under the law, and expect to be protected to a certain extent by this department, I would respectfully suggest to them that they be more vigilant as to their own affairs and as to whom they select as directors of their business.

The national-bank act contains no provisions regarding loans to directors, but in the laws of about one-half of the States attempts have been made to devise rules which would prevent the making of loans to directors in excess of the amount to which their credit entitles them. The provisions in the state banking laws concerning loans to directors may be resolved into three elements, (*a*) the requirement that a majority, two-thirds, or all of the board of directors shall approve such loans, (*b*) a limitation of the amount of loans to directors more stringent than that of loans to other persons, and (*c*) the requirement that loans to directors shall be secured. Two or all of these are combined in the banking laws of some States, but the requirement that loans to directors shall be formally approved by the board of directors is the one most frequently found. It has been thought that directors would be reluctant to vote for excessive loans to other directors if their vote is to be recorded.

In most of the States the provisions relating to loans to active officers of the bank are identical with those relating to loans to directors, but in some States they are more stringent. In three States—California, Nebraska, and Oklahoma—the active officers of a banking institution may not borrow from it. In Connecticut, banks and

trust companies may not "discount any paper made, accepted, or indorsed by any of their executive officers or clerks." The desirability of forbidding banks to make loans to their active officers has recently been urged by the Wisconsin special committee on banking.[a]

REAL ESTATE LOANS.

There is no more characteristic difference between the state banking laws and the national-bank act than the fact that, in almost all the States, state banks and trust companies may make loans on the security of real estate, whereas national banks are prohibited from doing so.[b] In some States, where the influence of the example of the national-bank act was strong enough at the beginning of state-bank regulation to secure the insertion in the state banking laws of the prohibition of real estate loans, it has later been found desirable to amend the laws in this respect. The Pennsylvania general banking law of 1878, for instance, did not permit banks to loan on real estate, but was amended in 1901 so as to permit such loans to be made. In North Dakota and South Dakota, also, similar changes have been made in the banking laws.[c]

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[a] Report of the Wisconsin Special Committee on Banking, 1910, p. 20.

[b] Revised Statutes of the United States, section 5137. In a considerable part of real estate loans the mortgage is only a collateral security. The bank looks primarily to the personal credit of the individual, but is further protected by an assignment of a mortgage. In many communities real estate mortgages are one of the most important forms of investment, and just as in other sections bonds and stocks are pledged as security for a loan, so in these sections mortgages are thus used. The Comptroller of the Currency, in his report for 1887, p. 8, recommended that the national-bank act be amended so as to permit loans on mortgages as collateral.

[c] N. Dak. (1899), chap. 28; S. Dak. (1893), chap. 23.

In 1910 trust companies in all the States and Territories where they are incorporated under general laws may loan on the security of real estate. State banks so incorporated may also loan on real estate in all the States and Territories except New Mexico and Rhode Island. In Rhode Island, however, banks may loan on real estate part of their savings deposits. In Colorado and Tennessee, the state banking laws apparently forbid the ownership of mortgages by banks, but permit loans on the assignment of mortgages as security. In Connecticut, Delaware, New Hampshire, and Vermont the powers of banking institutions are prescribed in their charters, but ordinarily, if not in all cases, they may loan on real estate.

A few of the state banking and trust-company laws contain provisions limiting the amount which may be invested in real estate loans. Provisions of this kind are found in the laws of Ohio, Vermont, Michigan, New York, North Dakota, South Carolina, Texas, Pennsylvania, Oklahoma, and Wisconsin. Under the provisions of the Michigan banking law, no real estate loans can be made by a commercial bank until a resolution stating the extent to which such loans may be made has been passed by a two-thirds vote of the directors, and the amount of such loans must not be more than 50 per cent of the capital of the bank.[a] The savings deposits in a commercial bank may, however, be invested to any extent in real estate loans. When the prohibition of real estate loans was repealed in North Dakota, it was

[a] Mich. (1887), art. 215, sec. 23.

enacted that loans secured wholly by real estate were not to exceed 50 per cent of capital and surplus. This provision is still retained in the banking law.

In New York a bank or trust company, if its principal place of business is located in a borough with a population of 1,800,000 or more, may not loan on real estate security more than 15 per cent of its assets; if it is located in a village of not over 1,500 inhabitants, and there is no savings bank in the village, not more than 40 per cent of its assets; if located elsewhere, not more than 25 per cent of its assets. In Texas a bank may not loan "more than 50 per cent of its securities" on real estate; in South Carolina not more than an amount equal to one-half of capital and deposits; in Pennsylvania not more than an amount equal to the time deposits and not more than 25 per cent of capital, surplus, and undivided profits. In Oklahoma loans on real estate must not exceed 20 per cent of the loans of the bank. In Ohio the directors must decide by a two-thirds vote to what extent loans may be made on real estate, but the aggregate amount of such loans must not exceed 50 per cent of capital, surplus, and deposits, except that if the bank does both a commercial and a savings bank business, it may loan up to 60 per cent of capital, surplus, and deposits. In Wisconsin a bank may not loan on real estate more than 50 per cent of capital, surplus, and deposits, unless such loans are specifically authorized by its board of directors. Finally, in Vermont not more than 80 per cent of the assets of a trust company may be invested in mortgages of real

estate, and not more than 60 per cent in mortgages of real estate outside Vermont.

There are also provisions in some of the state laws defining the character of the loans which may be made on real estate. These provisions relate (*a*) to the location of the real estate, (*b*) to the character of the lien, and (*c*) to the value of the real estate in its relation to the amount of the loan.

(*a*) In Massachusetts a trust company may not loan on mortgages of farms or unimproved land unless situated in the New England States or in New York. In Ohio banks may loan only on real estate in Ohio and immediately adjacent States.

(*b*) In California, Pennsylvania, Oklahoma, and North Dakota banks may loan only on first mortgages. In New York banks and trust companies, since 1908, must not make any loans on the security of real estate if the prior incumbrances upon such real estate exceed 10 per cent of the capital and surplus of the investing banking institution, or if they exceed two-thirds of its appraised value.

(*c*) In Texas a bank must not loan on real estate an amount greater than 50 per cent of its cash value; in Ohio not more than 40 per cent, if the real estate is unimproved, and not more than 60 per cent if it is improved. In Vermont a trust company may not loan on real estate an amount in excess of 60 per cent of the value of the property mortgaged, and if the mortgages are on unimproved or unproductive real estate, the amount loaned must not exceed 40 per cent of the value of the property mortgaged.

In some of the States in which there are large numbers of small banks, the banks have encountered difficulty in finding good real estate loans, because of the restrictions on the amount of a single liability. In Minnesota, for instance, where the amount which may be loaned to any one person, firm, or corporation is restricted to 15 per cent of capital and surplus, the small banks complained that they could not get the best real estate loans because such loans were made in relatively large amounts. In 1907 the Minnesota banking law was amended so as to permit a bank to make a loan on real estate to an amount equal to 20 per cent of the capital and surplus. The amount of such loans, however, was not to exceed 50 per cent of the value of the real estate mortgaged. In Iowa, where the limit on a single liability is 20 per cent of the capital of the bank, state banks may loan an amount equal to one-half of their capital stock on a mortgage of unincumbered farm land in Iowa worth at least twice the amount loaned. In Kentucky the limitation on the amount of any single liability does not apply to loans on real estate of a cash value greater than the loan.

Real-estate security as a basis for bank loans has been very generally condemned by writers on the subject of banking. Mr. Horace White says:

> The reason why lands and buildings ought not to form the basis of the loans of a commercial bank is that they are not quick assets. The liabilities of the bank being payable on demand, the assets must be converted into money within short periods. When real property is given as security for a debt, both borrower and lender look to it, and not to the personal obligation, as the source of payment.[a]

[a] Money and Banking, p. 409.

It will be noted that this view is based on the assumption that the deposits are demand liabilities. As will be shown later, it is one of the chief characteristics of the state banks and trust companies that a large part of their deposits are savings and other time deposits.

Within recent years the supervisors of state banks have shown no disposition to oppose the increase by the banks of their real estate loans. In several of the States, before land values became stable, the supervisors did object to allowing the banks to loan on real estate. The state examiner of Minnesota, for instance, in his report for 1886 recommended that banks should not be allowed to loan on real estate on the ground that such loans were not readily convertible. As has already been noted, loans on the security of real estate were prohibited during the period of most rapid settlement in North Dakota and South Dakota.

The most important recent criticism of real estate as a banking investment was made by the New York superintendent of banks in his report for 1907. He said:

A cause contributing to embarrassment in some cases was the excessive proportion of assets loaned upon real estate. Whether this amount was made up of direct loans or of loans secured by the assignment of first or second mortgages, they were found to be equally unavailable for use in obtaining credit. Commercial banks making a practice of loaning upon real estate mortgages were greatly embarrassed by the unmarketability of such security.

Certain companies incorporated for the purpose of dealing in real estate mortgages have a regular market for them, and such companies may not be criticised for accepting this character of property as an investment or for sale.

The objection to real estate for a bank of discount is not to its insufficiency, but to its character. As the obligations of such banks are payable

largely on demand, it is proper that the securities which they hold should be readily convertible into current funds. While a mortgage upon real estate may be good security, it can not ordinarily be availed of by a bank in an emergency.

We realize, however, the hardship that a prohibition against this character of loans would create, particularly in the smaller cities and towns of the State, where the making of such loans is essential to profitable banking and required by the needs of many borrowers. Personal collateral as security for loans is rarely obtainable by country banks.

In accordance with this recommendation an amendment made to the New York banking law permitted banks and trust companies in the smaller towns and cities to loan a larger percentage of assets on real estate loans than those in larger places.

Although adequate statistical data are not obtainable, there is reason to believe that the proportion of real estate loans to the total loans of the banks, even without legislative provision, is larger in the smaller towns and cities. An interesting analysis was made in 1899 by the bank examiner of Wisconsin of the real estate loans held by the state banks of that State. He said:

A classification of the loans and discounts indicates that $31,012,220.27, or 77.98 per cent of this class of assets, consists of paper with or without other personal security, and $8,749,881.51, or 22.1 per cent of loans on mortgage or other real estate security. By a further classification of the real estate loans, it may be noted that in cities of more than 6,000 inhabitants, real estate loans constitute 8.26 per cent, and in towns and cities of less than 6,000 inhabitants, 19.91 per cent of the aggregate capital, surplus, and deposits.[a]

In 1908 the real estate loans made by state commercial banks in San Francisco were only 14 per cent of their total loans and discounts, while the real estate loans made by

[a] Fifth Annual Report of the Wisconsin Bank Examiner (1899).

the interior state banks were nearly one-third of their total loans and discounts.

The chief concern of the state supervisors with reference to real estate loans has been the fear that through making such loans banks may come into the actual ownership of considerable quantities of real estate. Their assets would thus become hopelessly fixed. Practically all the state-bank and trust-company laws provide that banks and trust companies shall not hold real estate, except that which is necessary for the accommodation of their business, for longer than a certain period. These provisions are modeled in a general way on the provision in the national-bank act, which requires that real estate acquired in the collection of debts shall be disposed of within five years, although the period allowed in several of the state laws is less than five years. But in some of the States there are additional provisions intended to prevent more effectually any accumulation of real estate in the hands of the bank or trust company, such, for instance, as the provision that a bank or trust company, at a sale under a mortgage to it, shall not bid more than is owing to the bank.

Despite these restrictions and the vigilance of the state bank supervisors, in the period from 1892 to 1897 many state banks in the Middle Western and Western States came into the possession of large amounts of real estate. Under the conditions then prevailing it would have been impossible to force the banks to sell their real estate without driving many of them into insolvency. The increase in the value of real estate in these States since 1898 has enabled the supervisors to secure a great reduction in the real estate holdings of the banks.

Notwithstanding the disadvantages of real estate as a convertible asset, the power to loan on the security of real estate is a valuable one to many of the state banks.[a] Many banks, particularly those in the smaller towns and cities, if restricted to loans on personal security, find it difficult to fully employ their funds. There are not sufficient local loans of this kind to employ all the funds of the bank; and the amount not so employed, if it is to yield a revenue, must either be invested in outside commercial paper or deposited with banks in the great commercial cities. The following extract from the testimony of Mr. Arthur Reynolds, chairman of the legislative committee of the American Bankers' Association and president of the Des Moines National Bank of Des Moines, Iowa, before the National Monetary Commission, is illustrative of conditions which exist in many small towns:

Mr. WEEKS. Is there any substantial demand in Iowa that national banks be permitted to loan on real estate?

Mr. REYNOLDS. There is a very great demand in the State of Iowa; yes, sir. I have talked to very great many bankers, country bankers particularly, who are very favorable to that idea. In fact, I have in mind now two or three national bank managers that have told me they would be compelled to go out of the system if they were not permitted to loan on real estate. I think there is such a demand, yes, sir. I would not want to go on record as saying that I believe that it is a good thing to do; but I do say that there is quite a demand among the national banks for it.

Senator TELLER. What occasions that? Is it a lack of opportunity to make good loans?

Mr. REYNOLDS. Yes, sir; it is a lack of opportunity to make good loans, particularly in the State of Iowa. We are very rich there, and there is a

[a] According to reports to the National Monetary Commission on April 28, 1909, the loans of all the state banks in the United States on the security of real estate were 20.6 per cent of their total loans and discounts.

lack of opportunity of investment. It drives them into the commercial paper field. I have in mind right now a bank, one of our customers, that was caught on a piece of paper a short time ago, that was originally carrying a nice line of farming loans. The Comptroller's office requested them to cut out the farm loans and they cut them out and invested them in commercial paper, and they lost some of their money. I was talking to a man connected with that particular bank, and of course it was one of their thoughts that they ought to have a wider range in the matter of loaning on real estate.

The difficulty which the banks in the smaller towns and cities encounter in employing their funds in loans on personal security appears to be, to some extent at least, a sectional one. The large reserves held by the country national banks in the South and West are probably an indication of the disadvantage under which these banks labor in loaning their funds. According to the report of the Comptroller of the Currency for 1909, reserves were held at various dates in the year 1909 as follows:

	February 5.	April 28.	June 23.	September 1.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*
Central reserve cities	25.73	25.76	26.82	25.44
Other reserve cities	31.94	30.73	30.15	29.05
COUNTRY BANKS.				
New England States	25.12	25.15	24.51	24.40
Eastern States	23.09	23.18	22.19	21.99
Southern States	29.10	27.40	25.46	23.15
Middle States	26.09	24.48	24.97	25.13
Western States	32.68	32.49	30.43	29.86
Pacific States	31.14	32.67	31.20	29.99

It will be noted that while the reserves of the country banks of the Eastern States ranged from 21.99 to 23.09 per cent, the reserves of the country banks in the Pacific States ranged from 29.99 to 31.14.

It would be of interest to know for what length of time loans on the security of real estate are usually made by the banks. No statistical data bearing on this point can be obtained, but there is reason to believe that a large part of such loans are for a year or more. There is a great need in agricultural sections for comparatively small loans to cover the time of production. At present the banker is largely debarred from entering this field by the cost of examining titles and drawing mortgages. The expense is so great, considering the size of the loan, that credit is usually obtained from other sources.

CHAPTER V.

RESERVES.

STATE BANKS.

In most of the antebellum state banking laws reserves were required only against note issue. In Ohio, for example, the general banking law required a reserve of 30 per cent against circulation, but none whatever against deposits. Several of the state banking laws which survived the destruction of the state bank-note issue contained, however, provisions requiring banks to hold a reserve against deposits; but in none of these States was the increase in the number of state banks important. In those States in which the state banks were organized under the "business incorporation laws" there were, of course, no reserve requirements.

The first state banking legislation after the civil war was directed almost solely to the differentiation of banking corporations from other business corporations in respect to the capital required. Until 1887 a reserve was required for state banks in only three States, and in these the required reserves were small. A Connecticut law, enacted in 1872 and in force without amendment until 1901, required banks to keep a reserve equal to 10 per cent of all liabilities except capital stock; one-half of this reserve might be in certain bonds. In 1879 state

banks in Ohio were required to carry a reserve equal to 20 per cent of deposits, but the reserve might consist wholly of specified bonds. A more nearly adequate provision was contained in the Minnesota law of 1881, which required state banks to hold a reserve equal to 20 per cent of immediate liabilities. One-half of the required reserve was to be in cash, and one-half might be on deposit with other banks.

Even since the revival of state bank regulation, which began in 1887, the requirement of a reserve has not been regarded in many of the States as an important part of the state banking law. It is not difficult to understand this attitude. The primary purpose of state supervision is to reduce the number of bank failures, and, in case of failure, to secure the payment of as large a part of the claims as possible. The attention of the supervisor is concentrated, therefore, on questions related directly to the safety of the individual bank, such, for instance, as the prevention of excessive loans. To one aspect of the reserve requirement—the desirability of keeping the bank in a position to respond to the demands of its depositors and creditors in ordinary contingencies—he is forced to give some attention. But the wider importance of bank reserves—their relation to the national credit structure—does not make the same intimate appeal.[a] Except

[a] In 1898 the commissioner of banking in Pennsylvania in recommending that state banks should be required to carry a specified reserve, said that such a reserve would be of no avail in a panic, "since the institution which would pay out golden currency would offer the public a premium to denude it of its deposits." He thought, however, that the requirement of a reserve would inspire confidence.

in a few States, notably New York and Massachusetts, the supervisors are not brought into close contact with the central and organizing parts of the national credit system.

In 1910 a reserve of some kind for state banks is required in all the States and Territories which incorporate state banks, except Arkansas, Indiana, Illinois, Mississippi, New Hampshire, New Mexico, South Carolina, Tennessee, Virginia, and Wyoming.[a]

There are, however, the widest differences in the character of the reserves required. These variations may be dealt with conveniently under the following heads: (*a*) The amount of reserve, (*b*) the form of the reserve, and (*c*) the provisions for the enforcement of the reserve requirement.

Amount of reserve.—The most striking and important difference between the reserve required by the national-bank act and the reserves required by the state banking laws is that under the national-bank act the reserve is a percentage of "deposits"—i. e., of all deposits—while under the banking laws of a majority of the States either no reserve is required against time or savings deposits, or a smaller amount of reserve is required than against demand deposits.

We may classify the reserve requirements in the state banking laws into three groups according as the banks are required (1) to hold the same amount of reserve

[a] In some of these States the supervisors, acting under general powers conferred upon them by the state banking law—such, for instance, as the power to direct the discontinuance of unsafe practices—may require the banks to keep a specified reserve.

against all classes of deposits, (2) to hold a reserve only against demand deposits or liabilities, and (3) to hold different amounts of reserve against different classes of deposits.[a]

1. The following States and Territories require the same amount of reserve against all classes of deposits: Arizona, Florida, Iowa, Kansas, Michigan, Montana, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, and Wisconsin. In six of these States—Arizona, Nevada, North Carolina, Ohio, Montana, and Wisconsin—the amount of reserve required is 15 per cent; in South Dakota and Florida, 20 per cent; in Michigan, 15 per cent for banks in cities of less than 100,000 population and 20 per cent for banks in other cities; in Oklahoma, 20 per cent for banks in cities of less than 2,500 population and 25 per cent for banks in other cities; in Kansas, 20 per cent for banks in cities of less than 5,000 population and 25 per cent for banks in other cities; in Iowa, 10 per cent for banks in cities of less than 3,000 and 15 per cent for banks in other cities.

2. The banking laws in the States of the second group are alike in that they require a reserve only against a part of deposits, but they differ slightly with respect to the deposits against which a reserve is not required. In Alabama, Georgia, Louisiana, Maryland, Missouri, and West Virginia a reserve is required only against "demand deposits;" in Idaho, Minnesota, New Jersey,

[a] One State, Colorado, curiously enough, requires a reserve against savings deposits, but none against demand deposits.

and Washington a reserve is required only against "immediate or demand liabilities." In Delaware and New York a reserve is required against all deposits except time deposits not payable within thirty days. In Connecticut and Rhode Island a reserve is to be held against all deposits except savings deposits.

The amount of reserve required in Alabama, Connecticut, Idaho, Maryland, Missouri, New Jersey, Rhode Island, and West Virginia is 15 per cent; in Minnesota and Washington, 20 per cent; in Georgia and Louisiana, 25 per cent; in Delaware, 10 per cent for banks in cities of less than 50,000 population and 15 per cent for banks located elsewhere; and in New York, 25 per cent for any bank whose principal place of business is in a borough of 1,800,000 population or over, 20 per cent for any bank with its principal place of business in a borough with a population of 1,000,000 or over and less than 1,800,000, and 15 per cent for any bank located elsewhere in the State.

(3) The States in which the banking laws require different amounts of reserve against different classes of deposits are California, Kentucky, Oregon, Pennsylvania, Texas, and Utah.[a] The distinction between the classes of deposits is not the same, however, in all the States. In California a distinction is made between "savings" and other deposits; in Oregon and Penn-

[a] Under the banking law of Iowa the stock savings banks, which nearly all carry on a commercial business, are required to carry reserves of different amounts against their commercial and savings deposits.

sylvania, between demand and time liabilities; in Kentucky, between demand deposits and those on which the depositor has not the right to check without giving at least thirty days' notice; in Utah, between "commercial" and "savings" deposits; in Texas, between "demand deposits" and "savings deposits."

In all of these States the reserve required for "savings" or "time" deposits is less than that required for "demand" or "commercial" deposits.

The reserve required against "savings" or "time" deposits is 4 per cent in California; in Pennsylvania, 7½ per cent; in Kentucky, Oregon, and Utah, 10 per cent; in Texas, 15 per cent. The reserves required against "demand" or "commercial" deposits are as follows: Texas, 25 per cent; California and Pennsylvania, 15 per cent; Kentucky and Oregon, 15 per cent for banks in cities and towns with a population of less than 50,000 and 25 per cent for banks in cities of over 50,000 population; Utah, 15 per cent for banks in cities and towns with a population of less than 25,000 and 20 per cent for banks in larger places.

Form of the reserve.—Under the national-bank act the reserve of a bank must consist entirely of cash in bank and balances due from other banks. Country banks may count as three-fifths of their required reserves balances due from banks in reserve or central reserve cities, and banks in reserve cities are permitted to count as one-half of their reserve balances due from banks in central reserve cities.

The reserves of banks in central reserve cities must consist entirely of cash in bank.[a]

None of the state banking laws require that the reserve of any class of banks shall consist wholly of cash in bank. All the laws permit balances in other banks to be counted at least as a part of the reserve. There are great differences among the laws, however, with respect to the amount which may be so counted. In Idaho, Michigan, and Minnesota one-half of the required reserve may be in the form of balances; in Alabama, Arizona, Nebraska, New Jersey, North Carolina, North Dakota, Rhode Island, Texas, and West Virginia, three-fifths; in Louisiana, eight twenty-fifths; in Delaware, Kentucky, Nevada, Oklahoma, and Oregon, two-thirds; and in Iowa and Kansas, three-fourths.

In a few States a larger part of the reserve against "savings" or "time" deposits may be kept on deposit with other banks than of the reserve against demand or "commercial" deposits. In Ohio, nine-fifteenths of the reserve against demand deposits and eleven-fifteenths of that against time deposits may be in the form of balances with other banks; in California, three-fifths of the reserve against demand deposits and one-half of the reserve against time deposits may be so kept.

[a] Under the national-bank act, the cash-in-bank reserve must consist of "lawful money" (i. e., gold coin of the United States, silver dollars, fractional silver coin, legal-tender notes, treasury notes of July 14, 1890, and United States gold and silver certificates). No special importance appears to have been attached to the phraseology employed in most of the state banking laws in defining the cash-in-bank reserve. In some of them the phrase used is "cash on hand," in a large number it is "lawful money," and in still others the several varieties of currency which may be counted are enumerated. Such enumerations usually include national-bank notes.

Finally, in New York the provision with reference to the part of the reserve which may be carried in the form of balances is modeled more closely after that in the national-bank act in that the part of the reserve which may be carried in other banks is greater for banks located in the smaller towns and cities. A bank with its principal place of business in a borough of a population of 1,800,000 or over may deposit two-fifths of its reserve in other banks; a bank in a borough of less than 1,800,000 population and not maintaining a branch in a borough of 1,800,000 may deposit one-half; and banks located elsewhere, three-fifths.

In only a few of the States is a distinction in the amount of reserve required made between ordinary banks and banks acting as reserve agents. In California, Montana, Nevada, Oklahoma, and Wisconsin reserve agents must carry a larger reserve, and they may count as part of their reserve only balances due from other reserve banks. In California reserve agents must carry a larger reserve, and their reserve must be entirely in cash. In Rhode Island reserve depositories must carry a reserve of 25 per cent, except that Providence banks or trust companies serving as reserve agents only for banks and trust companies in Rhode Island towns need have only 15 per cent.

In the state banking laws hitherto considered the requirements as to the form of the reserve do not differ greatly from the requirements in the national-bank act. In the remaining States which require a reserve, however, the differences are fundamental. In one group of States, including Colorado, Missouri, Montana, South Dakota, Utah, Washington, and Wisconsin, although the reserve

must consist entirely of cash and of bank balances, the banks determine for themselves what part of their reserve shall be cash in bank and what part shall be in the form of bank balances. Even more important are the differences from the national-bank act in a final group of States. In Connecticut, Florida, and Pennsylvania, the reserve may consist partly, and in Georgia wholly, of securities. In Connecticut four-fifteenths of the reserve must be cash in bank, and the remainder may consist of balances in other banks or of railroad bonds that are legal investments for savings banks. The bonds must not, however, exceed one-fifth of the whole reserve. In Florida, the cash reserve must be two-fifths of the total, and the remainder may consist of balances in other banks or of United States, Florida, and certain municipal bonds. In Pennsylvania the cash in bank reserve must be one-third; another third may consist of United States, Pennsylvania state, and Pennsylvania municipal bonds; and the remaining third of bank balances. In Georgia the reserve may consist, in any proportion that the bank finds desirable, of cash balances in other banks and of "stocks and bonds" actually owned.

The state bank supervisors in several of the States, at one time or another, have recommended that banks should be allowed to count as part of their reserve specified securities,[a] on the ground that in case of need cash could be quickly secured by the sale of such securities. It will be noted that in all the above States except Georgia the

[a] In 1896 the treasurer of Georgia in his annual report recommended that the banks should be allowed to count as part of their reserves advances on cotton and naval stores which were being prepared for shipment.

character of the securities which may be counted as a part of the reserve is defined in such a way as to assure the safety of the investment. The chief consideration with reference to the form of a bank reserve is not, however, the safety of the investment, but the availability of the reserve in an emergency.

Certainly many of the securities which may be counted as reserve in these States could be sold during a panic only at a heavy loss, and to realize on any of them would require time. In his report for 1908 the commissioner of banking of Pennsylvania justly said:

> Such bonds may provide a safe investment, but they do not afford a facility for sale that renders them a quick asset, and, in my opinion, do not meet the requirements necessary when money is quickly needed.

In one very important particular the provisions concerning the form of the reserve in the state banking laws differ generally from the provisions in the national-bank act. Under that act, as has been said, the country banks may count as part of their reserve only those balances due from banks in reserve or central reserve cities, while banks in reserve cities may count as part of their reserve only balances due from banks in central reserve cities. These provisions facilitate the concentration of reserves in the great commercial cities, and particularly in New York City, and thereby aid in establishing a national reserve system.

The state banking laws do not to any appreciable degree reflect the same idea. In Kansas, Michigan, and Washington the reserve agents must be banks located in cities approved by the state bank supervisors. In Rhode

Island all state banks, national banks, and trust companies which are members of the Providence clearing house may be reserve depositories, and banks or trust companies in certain other cities also, if they are approved by the supervisor. In Delaware the balance must be carried in a Delaware bank or trust company or on deposit with a bank, banker, or trust company in New York, Philadelphia, or Baltimore. In North Dakota reserve depositories must be located in a "convenient commercial center." In Connecticut reserve agents must be banks which are members of clearing houses in New York, Boston, Philadelphia, Chicago, or Albany, or national banks, state banks, or trust companies in New Haven, Hartford, or Bridgeport. In Pennsylvania the reserve agent may be any Pennsylvania bank or trust company or any bank or trust company in a national-bank reserve city. In New York and California the reserve agents must be banks or trust companies within the State. In the other States no provision is made as to the location of reserve agents.

It is obvious from the foregoing that none of the state banking laws, except perhaps those of Rhode Island and Connecticut, are framed in such a way as to strengthen the tendency toward the concentration of banking reserves.[a] On the other hand, the laws in all the States leave the banks almost entirely free to deposit their

[a] In Michigan the commissioner in 1909 approved as reserve cities 30 places, of which 17 were in Michigan. Among the number were Alpena, Houghton, Marquette, and Calumet. Detroit is the only national-bank reserve city in Michigan.

funds in banks in the great commercial centers.[a] The strong economic pressure toward concentration is thus left free to act toward drawing reserves into banks located in the reserve and central reserve cities. The total resources of the state banks and trust companies are somewhat less than the total resources of the national banks; but on September 1, 1909, the net deposits of the New York national banks due to state banks and trust companies was $334,000,000, while the net deposits due to other national banks was $289,000,000.

Undoubtedly in many of the States the absence of provisions relating to the location of reserve banks or the laxity of such provisions as exist permits evasion of the reserve requirement. The New York special commission on banks in 1907 said:

> Care should be taken to prevent evasion of the law as to due-from-bank reserves, such as we find to have been practiced under existing law. To illustrate: Trust Company A deposits $100,000 with Bank B, B in turn deposits the same amount with Trust Company C, and C deposits the same amount with A. This would avoid an offset of deposits and leave each institution in possession of its original amount of funds and enable each to count such deposits as reserve under the present law.

The supervisors have for the most part been much more concerned with assuring themselves as to the solvency of the reserve agents of the banks under their supervision than with the concentration of reserves. In about one-half of the States which require a reserve the bank selected as a depository must be approved by the

[a] In most of the States the deposits are required to be in solvent banks. In a few States it is expressly provided that such deposits may be in banks or trust companies, and in a few others in state or national banks.

supervisor. Since the supervisor has no power of inspection over national banks or over state banks and trust companies in other States, his approval of such banks and trust companies can be based only on reports of the Comptroller of the Currency or the supervisors in other States.[a]

In Texas in order to serve as a reserve agent a bank must have a paid-up capital of $50,000. In New York a depository bank or trust company must have a capital of $200,000 or a capital of $100,000 and a surplus of $150,000.

The supervisors have been particularly concerned to prevent the depositing by a bank of part of its reserve with an allied bank. Where the supervisor has power to disapprove any particular bank as depository he may prevent such deposits, but it has been thought worth while in several States specifically to provide against such a contingency. Thus, in Kansas the depositing bank must not have any stockholders who are also stockholders in the depository bank. In California the depository is designated by a vote of the majority of the directors, but interested directors may not vote. In a few States also the amount of the deposit which may be carried in any one bank is limited. Thus, in Texas the balance due

[a] The Oklahoma bank commissioner apparently has insisted upon examining national banks in Oklahoma which were depositories of state banks. (Proceedings of the National Association of Supervisors of State Banks, 1909, p. 87.) The Oklahoma banking law expressly provides that the "bank commissioner may refuse to consider as a part of its reserves balances due to any bank from any other banking association which shall refuse or neglect to furnish him with such information as he may require from time to time relating to its business with any other bank doing business under this act which shall enable him to determine its solvency."

any depositing bank must not be more than 20 per cent of the deposits, surplus, and capital of the depository. In California not more than 5 per cent of the deposits of the savings department of a bank may be deposited with any one bank.

The means of enforcement.—The method of enforcing the reserve requirements under the state banking laws is in general similar to that prescribed in the national-bank act. In California, Pennsylvania, Oklahoma, North Dakota, New York, Delaware, Montana, Kansas, and Rhode Island a state bank must not, while its reserve is below the required amount, make any new loans or discounts otherwise than by discounting or purchasing a bill of exchange payable at sight; it must not declare any dividends. If for thirty (in Montana, sixty) days after notice the bank does not make its reserve good the supervisor may begin proceedings for the appointment of a receiver, or, in some of the States, may take possession of the bank and wind up its affairs. In Maryland, Michigan, Nebraska, South Dakota, Utah, and Wisconsin the provisions are similar, except that the payment of dividends is not prohibited. In a third group of States, including Connecticut, Florida, Kentucky, and Ohio, the only provision is that the supervisor may begin proceedings for a receivership if the bank after notice fails to make good its reserve. In a fourth group of States the exact measures to be taken in case the reserve is below the required amount are not specified. Such States are Oregon, Nevada, New Jersey, North Carolina, Minnesota, Missouri, Louisiana, Georgia, Idaho, Texas, Washington,

and West Virginia. In some of these States, and probably in most of them, the supervisor, acting under the general powers conferred on him to sue for a receiver in case of "disobedience to a lawful order" or "violation of law," may force a bank to make good its reserve. In a few of these States the bank is forbidden to make new loans except by discounting sight exchange. Finally, in Alabama a fine of $25 per day is imposed for each day after thirty days' notice that the reserve remains below the required amount.

TRUST COMPANIES.

In the greater number of States which incorporate both state banks and trust companies the reserve requirement is the same for both classes of credit institutions. This is the case in Alabama, Arizona, California, Connecticut, Delaware, Florida, Georgia, Idaho, Kentucky, Louisiana, Missouri, Nevada, North Carolina, Oregon, Pennsylvania, Rhode Island, Washington, West Virginia, and Wisconsin.[a] In Arkansas, Indiana, Illinois, Mississippi, New Hampshire, South Carolina, Tennessee, and Virginia a reserve is not required for either class. In a few States—Colorado, Iowa, Minnesota, Utah—although banks are required to keep a specified reserve, trust companies are not. On the other hand, in Wyoming, where no reserve is required for state banks, trust companies must carry a reserve of 25 per cent in cash or in demand deposits in other banks. The proportion of cash in bank to bal-

[a] In Montana, North Dakota, and Texas the law does not appear explicitly to require a reserve for trust companies, but if such a reserve is required it is the same as that required for banks.

ances is left to the discretion of the officers of the trust company. In New Mexico, where also no reserve is required for state banks, a reserve of 15 per cent against aggregate liabilities is required for trust companies, of which reserve three-fifths may be in balances from other banks. In neither Wyoming nor New Mexico does there appear to be any significance in the fact that a reserve is required for trust companies and not for state banks.

In the remaining States which charter both banks and trust companies there are differences in the amount and form of reserve required, in some cases substantial and in others comparatively unimportant. In Kansas the reserve required for trust companies differs from that required for banks in two important particulars. In the first place, the required reserve for trust companies is 10 per cent of time deposits and 25 per cent of demand deposits, whereas the required reserve for banks is 20 or 25 per cent of all deposits, according to the population of the place in which the bank is located. Secondly, the reserve of trust companies may be made up wholly or in part of United States bonds or demand loans secured by United States, state, or municipal bonds of a cash value equal to the amount of the loans. Similarly, in Maryland trust companies and banks are required under the act of 1910 to carry the same amount of reserve; but of this reserve trust companies must keep two-thirds in cash, whereas banks need keep only one-third. The trust company, however, may have the remaining one-third of its reserve on deposit with reserve agents or in specified bonds, while banks can count as reserve only

cash in bank and deposits with reserve agents. In Michigan the trust company need only keep a reserve against "matured obligations," while state banks must keep a reserve against all deposits. Moreover, the part of reserves which may be kept in the form of balances is larger for trust companies than for state banks. In Ohio the reserves required for banks and trust companies are the same except that in the case of trust companies part of the reserve may consist of securities. In South Dakota trust companies must carry a reserve of 10 per cent of time deposits and of 25 per cent of demand deposits, whereas state banks are required to carry a reserve of 20 per cent of all deposits. Finally, in New York the reserve required for trust companies is substantially less than that for state banks, but the state banks are allowed to keep a somewhat larger part of their reserves in the form of balances.

From the foregoing survey it will be noted that except in New York the differences between the requirements for trust-company reserves and those for state-bank reserves are chiefly of two kinds. In the first place, the provisions for trust-company reserves more frequently permit the counting of bonds as a part of reserve; secondly, the provisions for trust-company reserves more frequently include provisions for differing amounts of reserve against time and demand deposits. The provisions for trust-company reserves in those States which incorporate trust companies but do not incorporate state banks show the same characteristics. In Maine the trust companies are required to keep a reserve only against

deposits withdrawable within ten days, and in Massachusetts only against deposits withdrawable within thirty days. In Maine one-third of the required reserve may consist of bonds and in Massachusetts one-fifth. In Maine the entire reserve may consist of balances due from other banks and of bonds, but in Massachusetts at least two-fifths must be cash in bank.[a]

In recent years there has been much complaint in some States that the reserves required for trust companies are inadequate. Massachusetts and New York are the States in which the matter has been most discussed and in which the most considerable results in the way of legislation have been obtained. Some account of the history of legislation in these States with reference to trust-company reserves will illustrate both the reasons for the great differences with respect to the amount and form of reserves originally made between trust companies and banks and the causes which have tended toward an assimilation of the reserve provisions of the two classes of credit institutions.

In his report for 1907 the bank commissioner of Massachusetts thus described the development of legislation concerning trust-company reserves in Massachusetts:

> The earlier trust companies of Massachusetts, like most of those in the other Eastern States, were originally chartered to do a safe-deposit and trust business, and to accept such deposits as were incident thereto. It was natural that, besides accepting trust deposits for investment, they should also accept on deposit the funds of trustees and others awaiting investment or distribution, and allow interest thereon. These were time deposits, and were sufficiently stable to permit loans or investments being made against them up to almost 100 per cent of their volume. As the trust

[a] In Vermont and the District of Columbia there are no provisions for trust-company reserves.

companies grew in number and importance and began to accept demand deposits, and in the small cities to accept the deposits of, and to extend their credit to, merchants, it became necessary for them to keep a reserve against such deposits. When the general trust-company law was passed in Massachusetts in 1888, it contained a reserve section modeled on the charter requirements of many trust companies organized from 1880 to 1888, requiring a 15 per cent reserve, of which two-thirds might be in reserve banks and one-third might be in United States or Massachusetts bonds. This was the first trust-company reserve law enacted in the United States. In 1902 it was amended so that at present one-third must be cash, two-thirds may be in reserve banks, but one-half the latter may be in United States or Massachusetts bonds.

In 1908 radical changes were made in the reserves required for Massachusetts trust companies. Such companies were divided into three classes: (*a*) Boston trust companies, (*b*) reserve trust companies, (*c*) other trust companies, and a different reserve was required for each. The following table shows the amount of the reserve required for each class and of what it may consist:

	Required currency and specie.	Deposits in reserve banks.	Maximum of United States and Massachusetts bonds	Total.
		Per cent.	*Per cent.*	*Per cent.*
Reserve trust companies.	10 per cent of deposits	10	....	20
Boston trust companies.	8 per cent of deposits	[a] 8	4	20
Other trust companies.	6 per cent of deposits	[b] 6	3	15

[a] 12 per cent may be carried on deposit and no bonds.
[b] 9 per cent may be carried on deposit and no bonds.

Another important change was made at the same time. The trust company act of 1888 had required reserve to be held against deposits payable on ten days' notice. In 1908

it was provided that reserve must be held against all deposits except savings deposits and time deposits "represented by certificates or agreements in writing and payable only at a stated time." In 1909, in order to guard against evasion, it was provided that a trust company should not allow time deposits against which reserve is not kept to be withdrawn before the time specified, and if no time is specified such deposits must not be withdrawn without thirty days' notice.

In New York the development of the business of the trust companies and of legislation with reference to their reserves has shown similar tendencies. The first general law for the incorporation of trust companies in that State, enacted in 1887, made no provision for a reserve. It did require, however, that trust companies should invest their capital in specified securities and also that they should deposit with the superintendent of banks securities to an amount equal to 10 per cent of their capital. When the New York state banks were required in 1892 to keep a reserve, no provision was made for trust companies. A growing feeling that trust companies should be required to keep a reserve led to the enactment in 1906 of a law which required trust companies to maintain a reserve as follows: The total reserve of trust companies located in cities of 800,000 population or over was required to be 15 per cent of deposits, one-third of which required reserve was to be cash in bank; the remainder might be made up of bank balances and specified bonds, but not more than one-third of the whole was to be in bonds. The total

reserve of trust companies located elsewhere was required to be 10 per cent of deposits. Three-tenths of the required reserve was to be cash in bank; the remainder might consist of bank balances and bonds, but the amount of bonds which might be counted as part of the reserves was not to exceed three-tenths of the total required reserve.

The reserve required for trust companies by the law of 1906 was far less in amount than that required for national banks, and it differed from the reserve required for both national and New York state banks in that the cash-in-bank reserve was a smaller part of the whole and in that bonds might be counted as a part of the reserve. The agitation for an increase in the reserves of New York trust companies continued, and was increased by the panic of 1907 and the failure of several large trust companies in New York City. The special commission on banks, appointed in 1907 by Governor Hughes, gave its chief attention to the question of reserves, and in 1908 the New York legislature enacted a new law concerning the reserve of trust companies.

The most important provisions of the act of 1908 are as follows: Reserves are to be maintained against all deposits, exclusive of trust deposits not payable within thirty days, of time deposits not payable within thirty days and represented by certificates, and of deposits secured by bonds of the State of New York. Trust companies located in or having a branch office in a borough with a population of 1,800,000 or over

must have a cash reserve of 15 per cent; trust companies located in a borough with a population of less than 1,800,000 are also to have a reserve of 15 per cent, but one-third of the required reserve may consist of balances due from reserve agents; trust companies elsewhere in the State are to have a reserve of 10 per cent, of which one-half may consist of balances due from reserve agents.

The development of the legislation with reference to trust company reserves in Massachusetts and in New York has, therefore, been highly similar in several important respects:

1. In New York bonds may no longer be counted as a part of reserve, and in Massachusetts the proportion of bonds which may be counted has been much decreased.

2. In both States no reserve is at present required against time deposits. The first general trust company law enacted in Massachusetts provided that no reserve need be held against time deposits, but this exemption was ineffective until 1908, because until then a heavy tax was imposed on time deposits, with the result that the trust companies could not accept time deposits as such. In 1908, when the reserve requirement was revised, the tax on time deposits was repealed; and since that time the reserve has, actually as well as nominally been against demand ~~time~~ deposits only. The same exemption is a fundamental part of the New York law of 1908. The special commission on banks in 1907 considered the feasibility of classifying deposits in framing

a reserve requirement, but rejected the plan. The commission thus stated its conclusion:

It has been suggested to us to classify the deposits of trust companies, with a view to graduation of the reserve that should be kept upon the same, substantially as follows:

(*a*) Trust deposits, preferred by the terms of section 158 of the banking law. Such deposits are not subject to check, are awaiting investment, and require no reserve.

(*b*) Deposits payable upon notice of not less than thirty days, or maturing at a fixed date at least thirty days in the future. Such deposits would manifestly require less reserve than demand deposits.

(*c*) Demand deposits, which should manifestly require the same reserves as deposits in banks of discount.

We are not certain that such a plan of estimating reserves would prove practicable, and it would clearly open the way to difficulties in administration * * * .

To avoid the practical difficulties in a classified plan, we have applied the same to several companies for the purpose of ascertaining what ratio of reserve on the total deposits would be its equivalent.

The New York superintendent of banks, however, in his annual report for 1907, recommended that a reserve should not be required against trust deposits, nor against time deposits unless payable within thirty days, and the legislature followed this recommendation.

3. The amount of reserve required for trust companies has been much increased in both States, but the requirements even yet are more liberal than those for national banks or in New York for state banks. The discrimination thus made in favor of trust companies has been defended on the ground that there are differences of fundamental character in the nature of the deposits held by banks and by trust companies. These differences are: (1)

in the activity and fluctuations of the deposits, and (2) in the case of banks and trust companies in New York City and Boston in the extent to which the deposits are the deposits of other banks or trust companies.

The New York special commission on banks found in 1907 that 13.62 per cent of the deposits of the New York City trust companies were not subject to check nor due to other banking institutions. The Massachusetts bank commissioner, in his report for 1907, pointed out as evidence of the difference in activity between the deposits of trust companies and of national banks that the average daily clearings of the Boston trust companies during the last six months of 1907 were 3.75 per cent of their average daily deposits, whereas during the same period the average daily clearing of the Boston national banks was 9.44 per cent of their average daily deposits. A similar computation made by the superintendent of banks in New York and contained in his report for 1907 showed that while the trust companies in the city of New York had about the same amount of deposits as the banks of that city their clearings amounted to only about 7 per cent of the clearings of the banks. The superintendent stated the differences between the deposits in the two classes of institutions as follows:

> It is not a matter of theory, but of fact, that a large proportion of the trust companies' deposits are inactive. They include deposits by order of the court, by executors of estates, sinking funds under corporate mortgages, and the like, as well as the surplus funds of individuals and corporations deposited for income and pending investment. A large proportion of the deposits of banks are the margins of commercial borrowers and the active working capital of individuals or corporations, which are subject to daily draft and constant fluctuation.

The difference between the trust companies and the national banks located in Boston and New York in the proportion of their deposits due to other banking institutions can be stated with exactness. The Boston national banks held deposits of other banks on December 3,1907,to the amount of [illegible] per cent of their total deposits, whereas such deposits in the Boston trust companies [illegible] per cent of total deposits. Similarly [illegible] York City, in 1907, the percentage of deposits due [illegible] banks was [illegible] per cent for the trust companies [illegible] per cent for the national banks.

CHAPTER VI.

BRANCH BANKS.

The most characteristic feature of American banking is the extent to which the banks and trust companies are independent institutions. The national-bank act makes no provision for the establishment of branch banks except in cases of the conversion of state banks which already have branches. Such banks are allowed to retain their branches on condition that the capital is assigned to the mother bank and the branches in definite proportions, but in 1910 only some three or four national banks have branches. Under none of the state banking laws has there been built up an important system of branch banks. This has been partly due to the very general desire of each American community, no matter how small, to have its banks managed by its own citizens, and partly to the fact that in most of the States the establishment of branch banks is either explicitly forbidden or in no way provided for by law. In eight States—Colorado, Connecticut, Mississippi, Missouri, Nevada,[a] Pennsylvania, Texas,[b] and Wisconsin[a]—the opening of branch offices is forbidden by specific enactment. In a

[a] Until 1909 banks in Nevada and Wisconsin might have branches. In Wisconsin, however, branches might be established only in the same town or city in which the parent bank was located.

[b] One of the amendments to the Texas constitution adopted in 1904, by which the establishment of state banks was authorized, provided as follows: "Such body corporate shall not be authorized to engage in business at more than one place, which shall be designated in its charter"

large number of other States the banking laws make no provision for the establishment of branches, and it has been held in most of these States that the opening of branch offices is unlawful.

The States in which state banks and trust companies are definitely permitted to have branches are California, Delaware, Florida, Georgia, New York, Oregon, Rhode Island, Virginia, and Washington. In Louisiana, Maine, and Massachusetts trust companies may have branches. From the report of the state bank examiner of South Carolina it appears that banks in that State may open branches. In Maryland and North Carolina branches are operated by some banks and trust companies which were chartered by special act. There are in several of these States, however, restrictions on the opening of branch offices. In New York and Massachusetts branches may be established only in the city in which the principal office of the bank or trust company is located. In New York, moreover, only banks located in a city of 1,000,000 inhabitants or over may have branches; but any trust company may have branches. In Maine a trust company may establish branches only in the county in which it is located or in an adjoining county.

In nearly all the States which permit banks or trust companies to establish branches one or both of two conditions are imposed. In the first place, additional capital is required for each branch bank over and above the amount for the parent bank. Secondly, the establishment of a branch bank must be specifically authorized by some state official or officials.

The requirement of additional capital for the establishment of a branch bank is a corollary of the requirement of a specified capital for the establishment of a bank.[a] The amount of additional capital required for each branch office varies in the different States. In California it is $25,000; in New York, $100,000; in Oregon and Washington, the amount required for the establishment of an independent bank in the place selected. In Delaware a bank or trust company may not establish a branch office unless it has a paid-in capital of $25,000 and a surplus of $25,000 for the parent bank and for each branch. In Florida the capital must be assigned to the parent bank and its branches in definite proportion.[b] In Rhode Island, Virginia, and Georgia no additional capital is required.

The provision that branches must be specifically authorized is found in the banking laws of Delaware, California, New York, and Rhode Island. In New York and California authorization is not to be given until the superintendent of banks "has ascertained to his satisfaction that the public convenience and advantage will be promoted by the opening of such branch office." Similarly, in Rhode

[a] In Georgia branches may be established without additional capital being paid in. In his report for 1909 (p. 14) the state treasurer said: "I was also surprised to find that we had a number of branch banks operated in the following manner: With, say, $15,000 paid-in capital the bank in A is established; thereupon the bank of B will be established as a branch bank of A with no additional capital, and so on. In this way we might have an interminable number of branch banks established throughout the State with a paid-in capital of only $15,000."

[b] Since 1906 no new branch banks may be established in Mississippi, but every bank operating a branch office must set aside from its capital for the exclusive use of the branch not less than $10,000.

Island the board of bank incorporation authorizes the establishment of a branch bank if it "shall decide that public convenience and advantage will be promoted." The Delaware law does not specifiy the grounds on which the supervisor is to act in granting or withholding his approval.

In a considerable number of States which do not permit the establishment of branch banks the affiliation of banking institutions has been accomplished by other means. Control of several banking institutions has been in most of these cases secured either (*a*) through the ownership by a state bank or trust company of a controlling interest in the stock of other banking institutions, or (*b*) through the ownership by a person, a group of persons, or a holding company of a controlling interest in several banking institutions.

(*a*) National banks may not lawfully invest in the stock of other corporations, but under the laws of several of the States state banks or trust companies may invest in such stocks. Until 1907, for instance, a New York trust company might invest 10 per cent of its capital, surplus, and undivided profits in the stock of another domestic corporation. Such investments were made by trust companies in the stock of state banks, national banks, and other trust companies. In his report for 1907 the New York superintendent of banks recommended, as one of the steps toward breaking down the "too great interdependence" among banking corporations, that a trust company should be forbidden to hold more than 10 per cent of the stock of any other banking corporation. A similar suggestion was

made in the same year by the New York special commission on banks, and in 1908 this provision was made part of the New York banking law.

In several States the banking laws specifically prohibit the ownership by banks or trust companies of shares in other banking institutions or in all corporations. In California a bank or trust company may not invest in the stock of any other corporation. In Nevada a bank or trust company may not invest in the stock of any other bank or trust company. In Colorado, Kansas, Montana, Nebraska, New Mexico, Oklahoma, North Dakota, South Dakota, and Wyoming banks may not invest in the stocks of other corporations. In a considerable number of States in which there are no specific provisions against it the holding by a bank or trust company of the stock of any other company would be unlawful as being *ultra vires*. In some States the ownership of shares in other corporations has been merely restricted. In Kansas the total investment of any trust company in bank stock must not exceed an amount equal to one-fourth of the capital stock of the trust company. In Ohio banks may not invest more than 20 per cent of their capital and surplus in any one stock, but trust companies may invest without restriction in stocks which have paid dividends for five years. In Texas neither a bank nor a trust company may hold more than 10 per cent of the stock of any other banking corporation. In New Hampshire the investment of a bank or trust company in the stock or bonds of any other corporation is limited to 10 per cent of the capital of the investing bank or trust company. In Vermont a trust company

may hold as an investment not more than 10 per cent of the capital of any one bank, and it may not invest more than 10 per cent of its deposits nor more than $35,000 in the stock of any one bank.

On the other hand, in certain States the holding by one banking institution of stock in another has not met with opposition. In Massachusetts trust companies may invest at their discretion in the stock of banks or other trust companies. In his report for 1907 the Massachusetts bank commissioner said:

> The Massachusetts trust-company laws have always left the companies complete freedom in their investments, prohibiting only loans on real estate outside of New England and New York State. Loans on and investments in bank stocks are not in themselves bad loans or investments. It is generally known that control of the stock of four trust companies in Boston is held by three other trust companies. As long as such control is not improperly used, it is not detrimental to either the depositors or the minority stockholders. No abuses of such control have developed in Massachusetts, and should they occur it is believed that authoritative supervision could check them.

In Connecticut, also, a bank or trust company may hold such stocks and bonds as the "purposes of the corporation may require." In Rhode Island a bank or trust company may invest in stocks of other corporations to any extent.

(*b*). The second method of bringing a number of banking institutions under a single control, viz, through the ownership by a person, a group of persons, or a holding company of a controlling interest in several banks or trust companies, seems, in most of its forms, beyond the reach of any except the most radical legislation. The supervisors of state banks are, however, much opposed to the extension of connections of this kind among the banks under their

supervision. In several States such "chains" of banks have been formed primarily for the purpose of furnishing their promoters funds for carrying on outside enterprises. Some of these banks have failed disastrously, and the supervisors fear a repetition of such experiences. There has been recently, it seems, some tendency toward building up such chains on a large scale. In his report for 1909 the commissioner of banking of Wisconsin said:

A new feature in banking has manifested itself of late which, if permitted to go on unhindered, will eventually result in a monopoly control of the banking business. I refer to the so-called holding companies which are increasing with alarming rapidity in various parts of the country. One of these companies, with headquarters in Minneapolis, Minn., owns a controlling interest in more than 50 banks in Minnesota, Iowa, Wisconsin, and the Dakotas. In Wisconsin, 8 or 10 banks are now controlled by this one company; two other companies have recently been organized at Minneapolis, Minn., for the purpose of getting control of banks either by buying up a majority interest in banks now in existence or by organizing new banks. The same objection that has repeatedly been advanced against branch banking or chain banking applies with equal force to this new method of manipulating the banking business. The representatives of the holding company are usually elected to the offices of president and cashier of the bank, and while they generally have some local directors, the management is dominated by the holding company influence, and the loans are in the majority of cases made to parties residing outside of this State. Legislation should be had to discourage this evil in every proper manner.

Although it has not been feasible to forbid the ownership of stock in a banking institution by persons or companies who already own a controlling interest in other banking institutions on the ground of such other ownership, one device by which control is secured by a comparatively small outlay of capital has received legislative attention in several States. In the formation of such

"chains," it frequently happens that the promoters carry through the enterprise by borrowing from the institutions which they already control, in order to buy a controlling interest in others. This method, as practiced in New York City for some years prior to 1907, was thus described by the New York special commission on banks:

> A method of a certain class of promoters, well illustrated by the recent developments in certain embarrassed financial institutions, is to buy stock of a bank or trust company, and by using that as collateral borrow money with which to buy stock of another banking institution. By repeating this process and by claiming the indulgence due a stockholder in the matter of extending credit in other directions, it is possible for adroit and unscrupulous men to acquire the nominal ownership of a very considerable amount of stock in a number of institutions, which will enable the promoters to utilize their credit and obtain funds to carry on their various enterprises.

The commission and the New York superintendent of banks agreed in recommending that banks and trust companies should be forbidden to loan on the stock of any "monied corporation" an amount exceeding in the aggregate 10 per cent of the capital of the corporation whose stock was offered as collateral. In 1908 this recommendation was enacted into law by the New York legislature. Similar limitations on the extent to which a bank or trust may loan on the security of the shares of [illegible] bank or trust company are contained in a few of [illegible] other state banking laws. The California banking [illegible] 1909 contains a provision identical with that en[illegible] in New York in 1908. The New Hampshire bank[illegible] forbids a bank or trust company to hold as se[illegible] loan the stock of any corporation in excess [illegible] of the capital of the loaning bank. The

Texas law forbids a bank or trust company to hold as security for loans more than 10 per cent of the stock of another bank or trust company. The special committee on banking of the Wisconsin legislature recommended in 1910 that a similar provision should be inserted in the Wisconsin banking law.

The number of branches of banks and trust companies can not exceed a few hundred in the entire United States. Compared with the total number of banks and trust companies this is a small development. Moreover, the most important affiliations among banking institutions are among those located in the same city. The "chains" of country banks possess, for the most part, little vitality, and in the total banking business of the country they play an insignificant rôle. The great mass of state banks and trust companies are independent institutions. The most enduring affiliations at present existing among the banking institutions are those between institutions of different classes; as, for example, between a national bank and a trust company or a state bank and a trust company. The comparatively limited powers of the national banks and in some States of the state banks have made it desirable for many of these institutions to affiliate trust companies with themselves in order that desirable business may not be lost.

CHAPTER VII.

SUPERVISION.

I. STATE BANKS.

The development of supervision over state banks has been closely connected with the differentiation of banking corporations from ordinary business corporations in respect to the terms of incorporation. Supervision has been inaugurated primarily, not to enforce regulations essentially peculiar to the business of banking, such as the requirement of a reserve, but in order to enforce the group of rules which have been discussed above under the head of "Capital." With the development of the state banking systems, however, an increasing amount of attention has been paid to other regulations.

It will be convenient in discussing the development of state bank supervision to consider, first, the means employed of securing information; secondly, the powers bestowed on the state supervisors; and, finally, the supervising officials.

MEANS OF INFORMATION.

Reports.—Except in a few States the only means of information concerning the condition of banks which was in use until 1887 was the report of the bank to some state official. In many of the States the antebellum laws had imposed on banking corporations the duty of making

reports of their condition, and much of this legislation remained in force even after the passage of the national-bank act and the wholesale conversion of the state banks into national banks. In 1873, when the Comptroller of the Currency first began to publish statistics of state banks, reports were made by the banks in nearly all of the New England, Eastern, and Middle Western States.

An examination of the table on page 178 will show the increase since that time in the number of States which require reports. At the present time regular reports to some state official must be made in all except two of the States and Territories which incorporate state banks. These States are Arkansas and Tennessee.[a] With the development of state bank supervision, the character of the required report has changed greatly. The earlier laws usually required reports to be made on a specified date, and provided ordinarily for only one or two reports each year.[b] Reports are now made more frequently and on days set by the state officials which are not known in advance by the officers of the banks. The more recent legislation follows closely the provisions in the national-bank act, and authorizes the supervisors to call for a specified number of reports during each year. The report is for some past day which is selected by the supervisor.

[a] In Tennessee an obsolete law requires a monthly statement to the comptroller.

[b] A considerable part of this legislation had the aim merely of securing statistical information. The Comptroller of the Currency, at various times, has urged on the state governments the expediency of requiring reports (see Report of the Comptroller of Currency, 1879, p. 59), and it was apparently in compliance with his request that the greater part of the legislation prior to 1887 was enacted.

In 1910 the banking laws of 22 States require four reports each year; 9 require five reports; 9 require two reports; 4 require three reports; and 1 requires one report. In nearly all the States the number of reports required is a minimum, and the supervisors may call for additional reports if they see fit.

There has been an increasing disposition to make the calls on the days on which the Comptroller of the Currency makes his calls. In a few States—California, Colorado, Oregon, and Washington—the banking laws provide explicitly for calls on the same days as those of the Comptroller. In a considerable number of other States the supervisors, in the exercise of the discretion permitted them by the state banking laws, have adopted the policy of calling for reports simultaneously with the Comptroller. At the Seventh Annual Convention of the Supervisors of State Banks, in 1908, the committee on uniform laws reported in favor of making calls on the same dates as the Comptroller. The committee's recommendation was as follows:

> The supervisor should have authority to make at least five calls a year for reports of condition on past dates, and it is desirable that these calls should be made on the dates on which the Comptroller of the Currency makes his calls. The object of this is twofold: (1) To prevent the transferring of cash between national banks and state banks in order to show a large reserve, which might be done if the calls were made on different dates; and (2) to enable those who have occasion to study bank reports to get simultaneous statements of all the banks of discount in the country several times a year.

In 1909 the same committee reported that the supervisors in 22 States would make five calls on the same days as the Comptroller. In 7 States the supervisors were

able to make only from one to three calls, but agreed to make these simultaneously with the comptroller. The provisions of the banking laws in certain other States did not permit compliance with the recommendation of the committee. In New Hampshire, for instance, the dates for the reports are specified. In New Mexico the reports must be called for some day in January and in July. In Alabama the report must be called for a date not more than three days prior to the issue of the call.

Most of the supervisors also have power to call for a special report from any particular bank whenever they deem it necessary. This power has been specifically given in all the States and Territories which require reports, except Arizona, Connecticut, Illinois, Kentucky, Louisiana, Mississippi, Minnesota, Missouri, New Hampshire, New York, New Mexico, Oregon, South Carolina, and Rhode Island. In several of these, also, the supervisors acting under general powers vested in them may require such reports.

The form of the bank reports is fixed by law in a few of the States, notably in California, Louisiana, New Hampshire, and Missouri; but in the greater number of the States, the supervisor has power to determine the form of the report. In 1908 a committee of the National Association of Supervisors of State Banks recommended for adoption a standard form of report and in 1909 the same committee reported the result of its efforts to the association, as follows:

> Seven States have adopted the uniform classification of the association, with only such minor changes as appear necessary to the heads of the various departments.

Two will adopt the classification within a short time.

Five have adopted the classification in its substantial features.

Five have adopted the classification as nearly as possible under the provisions of their respective banking laws.

Three have adopted it, or their old blanks conform "very closely."

Ten have made no definite reply, but are favorable toward the proposition.

Three are noncommittal.

Three departments, for various reasons, can not conform; they are Louisiana, Maine, and Alabama.

The publication of the report in a local newspaper is required in all the States and Territories which require regular reports; and in Tennessee, where the banks do not report to any state official, they must publish a semiannual statement.

Examinations.—In 1870 state banks were regularly examined in all of the New England States except Rhode Island and Vermont. In the other States which at that time made provision for examinations—New York and New Jersey—examinations were made when there was reason to suspect improper management, or on the application of stockholders or creditors. In New York, also, the banks were examined on certain specified occasions, as, for instance, on the reduction of their capital stock. In 1878 the superintendent of banks in New York devised a new form of bank report designed to reveal unsafe conditions. On the basis of these reports he made a considerable number of examinations. He urged that regular examinations should be made, and said:

In the light of experience, I deem the examinations a remedial agency of great effectiveness in securing and maintaining soundness in resources of banks and lawful administration of their affairs.

In each of several annual reports thereafter the superintendent urged the importance of regular examinations, and in 1884 he was given authority to examine the banks whenever he saw fit.

In Virginia,[a] Florida,[b] New Mexico,[c] North Carolina,[d] and Pennsylvania,[e] provision for the examination of banks was made prior to 1887, but the state officials were only authorized to make examinations on application, or when they had reason to believe a bank unsafe. The only laws passed from 1865 to 1887 which authorized regular examinations were those of New York,[f], Indiana,[g], Minnesota,[h] California,[i] and Iowa.[j] In several of these States regular examinations were not instituted at once. In Indiana, under the act of 1873, the state auditor was authorized "as often as shall be deemed necessary or proper" to appoint some one to make an examination of the state banks. Examinations appear to have been made biennially until 1880, when annual examinations were begun. Similarly, in Iowa, the Code of 1873 authorized the auditor, at his discretion, to examine the banks; but only occasional examinations were made until 1879, when an examination of all the banks was made. In 1883 annual examinations were instituted.

[a] Va. (1884), chap. 198, sec. 1.
[b] Fla. (1868), chap. 1640, sec. 12.
[c] N. Mex. (1884), chap. 36, sec. 7.
[d] N. C. (1887), chap. 175.
[e] Pa. (1876), P. L. 161, secs. 26 and 27.
[f] N. Y. (1884), chap. 47.
[g] Ind. (1873), Chap. VIII, sec. 18.
[h] Minn. (1878), chap. 84, sec. 14.
[i] Cal. (1878), p. 840.
[j] Iowa, Code of 1873, sec. 1571.

In 1910 regular examinations are authorized in all the States and Territories except Arkansas, Kentucky, Mississippi, and Tennessee. Arkansas and Tennessee permit the formation of banking corporations on the same terms as ordinary business corporations, and in Mississippi and Kentucky the differentiation is slight. On the other hand, Arizona is the only one of the States and Territories incorporating banks on the same terms as ordinary business corporations which provides for regular examinations.

Of the 41 States and Territories which authorize the regular examination of state banks in 1910, 20—Alabama, Arizona, Florida, Idaho, Illinois, Maryland, Missouri, Montana, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming—require that the banks shall be examined at least once each year; 14—California, Colorado, Connecticut, Georgia, Kansas, Louisiana, Michigan, Minnesota, Nebraska, New York, Ohio, Oklahoma, Rhode Island, and South Dakota—require that examinations shall be made at least twice a year; 1, Nebraska, requires that examinations shall be made at least three times each year, and 1, Texas, by an act passed in 1909, requires that examinations shall be made at least quarterly.[a] The more recent legislation provides almost uniformly for at least two examinations. In the re-

[a] In several of the States the annual reports of the supervisors complain that they are unable, because of inadequate appropriations, to make the required number of examinations. See, for instance, Report of Treasurer of Georgia, 1908, p. xi; Report of State Bank Examiner of Oregon, 1909, p. xiv; and the Report of Public Examiner of South Dakota, 1907–8, p. 19.

maining States—Delaware, Indiana, Iowa, New Jersey, and Pennsylvania—the banking laws leave the number of examinations to the discretion of the state supervisors, but in all of these States except Delaware[a] examinations appear to be made at least annually.

In practically all of the States whose banking laws authorize the making of regular examinations the supervisors may also at any time make a special examination of a particular bank.

In a considerable number of States the supervisors make an examination of a bank before it begins business. Such examinations are provided for in California, Illinois, Kansas, Maryland, Michigan, Missouri, New York, North Carolina, Ohio, Rhode Island, Washington, West Virginia, and Wisconsin, and in several other States the supervisors insist on making an examination before issuing a certificate of incorporation. The chief purpose of such an examination is to ascertain whether the capital has been fully subscribed and partly or wholly paid in as prescribed by law. The Comptroller of the Currency since 1908 has adopted a similar policy, and now requires that an examination shall be made of every national bank before authority to begin business is given.[b]

Under practically all of the state banking laws the examiners are paid a fixed salary. The state laws in this respect present a notable contrast to the national-bank act, under which the examiners receive their remuneration entirely in fees. In several of the States, at one time or

[a] Report of the Insurance Commissioner of Delaware, 1906.
[b] Pratt's Digest, 1908, p. 35.

another, the bank examiners have been paid by fees,[a] but in 1910 this method of remuneration is found only in Delaware and Illinois. The chief objection to the fee system is that the examiner, being dependent for the amount of his remuneration on the number of banks examined, is tempted to do his work hastily and, as a result, inefficiently.[b]

In only a few States, notably in several of the New England States and in Ohio, does the cost of bank supervision fall entirely on the State.[c] The banks in nearly all of the States are required to pay fees either annually or for

[a] Florida, until 1907; Indiana, until 1907; Iowa, until 1904; Nebraska, until 1903; North Carolina, until 1907; Utah, until 1909.

[b] In his report for 1887 the Comptroller of the Currency said: "From many points of view, it would be expedient for the examiners to be paid out of the tax on national banks, and not by fees. The present system establishes relations between the bank and the examiner which are inconsistent with the functions of that officer and with what ought to be his attitude toward the bank." (Report of the Comptroller of the Currency, 1887, p. 9.) See also, to the same effect, Report of the Comptroller of the Currency, 1900, vol. 1, p. xxvii. For a discussion of the relative merits of the two methods of remuneration, see Suggested Changes in the Administrative Features of the National Banking Laws, 61st. Cong., 2d sess., Doc. No. 404, pp. 197 et. seq. and 285 et seq.

[c] The New York superintendent of banks urged in 1909 that the State should defray the entire cost of supervision. He said: "I believe that the principle of taxing banks, savings banks, trust companies, and other institutions for the expense of the banking department is ill advised and indefensible. Primarily the supervision is for the benefit and protection of the public, and if it be of value in that regard, then it is undeniable that the public should meet the cost. Supervision over the railroads was formerly exercised at the expense of those corporations, but when the public service commissioners were created and their powers established, the correctness of the principle here advanced was fully recognized, and it was not even suggested that the old practice be continued. The same principle should govern in the supervision of our financial institutions. The best thought of to-day does not approve the present system, and it would be more consistent and more thoroughly in keeping with the dignity of the Commonwealth for the State to provide from its general revenue funds for the support of the banking department."

each examination, and from these fees the salaries and expenses of the bank examiners are paid wholly or in part. In a few States, notably New York and California, the expenses of supervision are apportioned among the banks in proportion to capital or deposits.

Besides the examinations made by the state officials, a considerable number of States in recent years have made provision for the examination of state banks at intervals by their directors. The chief purpose in providing for such examinations is to keep the directors informed as to the character of the loans and investments of the bank.[a] It is a matter of complaint by the state supervisors, as well as by the Comptroller of the Currency, that the greater part of the bank failures result from the neglect by directors of their duties. In his testimony before the National Monetary Commission, Comptroller Murray recently said:

> In going over the records of the 500 banks that have failed, it is shown that nearly all of them, except those where there were defalcations and stealing, have failed because the directors have paid no attention to the banks at

[a] In order to bring the affairs of the bank under the observation of the directors, provision has been made in Michigan (1909, ch. 193) and New York (1909, ch. 155) that the directors or a committee of the directors at regular monthly meetings shall examine all loans and investments made since the last meeting. The New York law is much more detailed and provides for the submission at such meetings of a "written statement of all purchases and sales of securities and of every discount and loan, exclusive of discounts and loans of less than $1,000. Such statements shall also contain a list giving the aggregate of loans and discounts to each individual, firm, or corporation whose liability to such corporation has been increased $1,000 or more since the last regular meeting of the board * * *" A copy of this statement, properly verified, must be filed with the minutes of the board. The enactment of this legislation was recommended by the superintendent of banks of New York in his report for 1907 (p. xliii) and also by the New York special commission on banks, 1907. Similar legislation has been recommended by the Wisconsin special committee on banking, 1910.

all, but have just let them drift until they actually became insolvent. The history of the office shows that no bank that has lived within the law, or where the directors have required the executive officers to stay within the law, has ever failed, and I believe one never will fail.[a]

The result of neglect on the part of the directors frequently is that the bank officials or a coterie of interested directors misapply the funds of the bank.[b]

A secondary but important purpose in some of the States in providing for such examinations has been to secure a valuation of the bank assets by the directors. As has been noted above, the central point in the regulation of banking in all the States is the rule requiring the maintenance of a specified capital, and the chief purpose in the examination of banks is to ascertain whether capital has been impaired. The bank examiner, with the advice and guidance of his official superiors, must therefore value the assets of the bank in order to ascertain whether they are of the value at which they are carried on the books of the bank, and in making such a valuation, the sworn valuation of the directors is of great service.

In 1910 the banking laws of 19 States—California, Georgia, Iowa, Kansas, Michigan, Mississippi, Minnesota, Nebraska, Nevada, New Hampshire, New York, New Jersey, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Virginia, and Wisconsin—require the directors or a committee of the directors of a state bank to make an examination of the bank. In Missouri a committee

[a] "Suggested Changes in the Administrative Features of the National Banking Laws," 61st Cong., 2d. sess., Doc. No. 404, p. 280.

[b] In order to secure as far as possible that the directors shall be financially interested in the welfare of the bank, the banking laws in a majority of the States provide that directors must be the bona fide owners of a specified number of shares.

of shareholders, elected as the shareholders decide, must make an examination. In most of the States examinations must be made at least twice a year, but in several States they must be made quarterly, and in others, annually.

In nearly all of the States which provide for the examination of banks by their directors, a report of the examination must be forwarded to the state supervisor; but in some of the States it is required only that the report shall be spread on the minutes of the board for the information of the supervisor or his examiner, and in three States—Virginia, Tennessee, and Nebraska—there are no provisions even for recording the result of the examination.

The character of the report which is to be made is not explicitly defined in some of the States. In Mississippi, Kansas, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, Virginia, and Tennessee it is provided merely that the directors are to make a thorough examination of the affairs of the bank. In Iowa and New Hampshire the report of the examination is made on blanks furnished by the supervisor, and must therefore cover all matters concerning which he desires information. In the remaining States which require such examinations the laws make explicit provision as to the character of the report. The provision inserted in the New York banking law in 1905, which has been the model for most of the recent legislation of the same kind, requires, for instance, that the report "shall contain a statement in detail of loans, if any, which in the opinion

of the directors are worthless or doubtful, together with their reasons for so regarding them, also a statement of loans made on collateral security, giving in each case the amount of the loan, the name and market value of the collateral, if it has any market value, and, if not, a statement of that fact and its actual value as nearly as possible." Similar provisions are found in the banking laws of California, Georgia, Michigan, Minnesota, Missouri, South Dakota, and Wisconsin.

Nearly all the laws providing for the examination of banks by their directors have been passed in recent years, and it appears likely that such examinations will shortly become a customary feature of the state banking laws. The committee on uniform laws of the National Association of Supervisors of State Banks recommended in 1908 the enactment of similar laws in other States, and the recommendation was approved by the convention.[a]

POWERS OF THE SUPERVISORS.

Authorization.—As has already been noted, one of the purposes in many of the States in abandoning the incorporation of banks by special act was to do away with favoritism in the granting of charters. Under the general incorporation laws, any persons who comply with certain specified conditions may become incorporated. The conditions for incorporation laid down in most of the general

[a] Proceedings of the Seventh Annual Convention of the National Association of Supervisors of State Banks, pp. 21, 36. For an adverse opinion as to the probability of thus securing the interest of directors, see "Suggested Changes in the Admistrative Features of the National Banking Laws," 61st Cong., 2d sess., Doc. No. 404, p. 356.

banking laws are of such a kind that the act of the state officials in approving or issuing charters is purely formal.

In several States, however, power has recently been conferred on the supervisors to exercise more or less discretion in authorizing the incorporation of new banks. In North Dakota, Ohio, Michigan, South Dakota, Wisconsin, and West Virginia the supervisors have power to refuse authorization if the bank is formed for other than the legitimate business contemplated by the banking law. In Minnesota the supervisor must be satisfied that the bank has been organized not only for legitimate purposes, but also "under such conditions as to merit and have public confidence." In Nebraska the state banking board must satisfy itself, before granting a license, that the incorporators are persons of integrity and responsibility. In Illinois the auditor may withhold the certificate of incorporation, "when he is not satisfied as to the personal character and standing of the officers or directors, or when he has reason to believe that the bank is organizing for any other purpose than that contemplated by this act." In California and New York the supervisors are required to ascertain, from the best sources of information at their command, "whether the character and general fitness of the persons named as stockholders are such as to command the confidence of the community in which such bank is proposed to be located." These provisions are intended to give the supervisors power to prevent the formation of banking associations for illegitimate or fraudulent purposes and to prevent the formation of such associations by

irresponsible and inexperienced persons. Similar provisions are found in the banking law of Oklahoma.

In a few States the banking laws give the supervisors still larger discretionary powers with reference to the authorization of new banks. In Rhode Island the board of bank incorporation must give a certificate that "public convenience and advantage will be promoted" by the establishment of any proposed bank before a charter is granted. In New Jersey the commissioner of banking and insurance approves the certificate of incorporation of a bank, if it appears to him that the establishment of such a bank will be of public service. In South Dakota the public examiner may refuse a certificate if the business of the town or city in which the proposed bank is to be located does not warrant the incorporation of another bank. In Oklahoma the bank commissioner has refused to issue certificates of incorporation for banks when he considered the business of the town in which the proposed bank was to be located insufficient to support an additional bank.[a] In New York the superintendent of banks has had power since 1908 to refuse a certificate of incorporation to a bank if in his opinion the public convenience and advantage would not be promoted by its establishment.

Considerable differences of opinion appear to exist as to the desirablity of conferring power to refuse authorization for the establishment of new banks in cities or towns where the supervisor regards the banking facilities as

[a] Proceedings of the Eighth Annual Convention of National Association of Supervisors of State Banks, 1909, pp. 85, 89.

already ample. The New York special commission on banks in 1907 favored strongly the conferring of such powers on the superintendent of banks. They said:

It has sometimes happened that banking institutions have been organized for no better purpose than to give employment to the parties bringing about the organization, without regard to the need of the locality. Because of the very high price that the stock of successful banks has commanded, institutions have been organized by promoters whose apparent ultimate object was to realize a profit by selling the same after organization was completed.

At the Seventh Annual Convention of the National Association of the Supervisors of State Banks in 1908, the committee on uniform laws recommended that supervisors should be given authority to decide whether the proposed incorporators of a bank are proper persons to conduct a banking business, and also whether "any need of such a bank exists in the locality in which it is proposed to establish it." The recommendation was eliminated from the report as adopted, apparently because many of the supervisors were opposed to vesting in the supervisors any power to determine the need of a community for additional banking facilities.[a] On the other hand, the supervisors in several of the States have recently urged that they be given such powers.[b] In his report for 1909, the Secretary of the State Banking Board of Nebraska said:

There is one feature of the present situation in this State to which I desire to call your attention and for which there seems at present no adequate remedy, and that is the establishment of banks where banking often results in two or three, or more, weak or poorly paying banks where fewer would

[a] Proceedings of the Seventh Annual Convention of the National Association of Supervisors of State Banks, 1908, pp. 18, 34.

[b] Fourth Annual Report of the Bank Commissioner of Idaho, p. 5; Report of Public Examiner of Minnesota, 1907–8, p. viii.

be stronger and safer and meet all the requirements. Your honorable board should have the same privilege as the Comptroller of the Currency in the supervision of national banks. You should have a legal right, when application is made for a charter for a bank, to decide on the qualifications, the financial ability, the past record of the proposed management, and to determine whether or not the community where the proposed bank is to be established justifies the venture. Repeated instances coming to this department clearly indicate the necessity of some step in this direction.

The national-bank act confers authority upon the Comptroller to withhold his certificate when it has been ascertained that the association has been organized for purposes other than those contemplated by the act. Also the organization of associations with a capital of less than $100,000 is subject to the sanction of the Secretary of the Treasury. Within the past two or three years the Comptroller of the Currency has been more careful than formerly in the scrutiny to which he subjects proposed incorporations of national banks. In his report for 1909 the Comptroller said:

To avoid the formation of associations for ulterior purposes or by those lacking the qualifications necessary to the successful conduct of the banking business, or in a place the population and business of which are insufficient to warrant the establishment of a national bank, the Comptroller, upon receipt of an application to organize causes a special investigation to be made, the results of which determine the favorable or unfavorable action.[a]

Powers with reference to banks engaged in business.—In all of the States and Territories which charter state banks, except two—Arkansas and Mississippi—some state official is given power, in certain contingencies, to take action with reference to the banks under supervision. These powers

[a] Report of the Comptroller of the Currency, 1909, p 18; see also Proceedings of the Eighth Annual Convention of the National Association of Supervisors of State Banks, 1909, p. 109.

of the supervisors may be described from the two closely connected standpoints: (1) Of the contingency in which action may be taken, and (2) of the nature of the action.

The contingency in which the supervisors are most commonly given power to act is in case of insolvency, i. e., if the bank fails to meet its obligations, or if its assets, as valued by the supervisor, are less than its liabilities. Specific provisions for action in such a contingency are found in the laws of all the States and Territories which incorporate state banks, except Arkansas, Connecticut, Mississippi, New Hampshire, Tennessee, and Wyoming. In Connecticut the supervisor may take action if the public is in danger of being defrauded, and in New Hampshire, if "necessary for the public safety." In Wyoming action is to be taken if the bank fails to meet its obligations. In many of the States the power to take action in case of insolvency was for a considerable time the only power conferred on the supervisors. In one State, Alabama, insolvency is at present the only contingency in which action by the supervisor is specifically authorized.

Action by the supervisor is specifically required by the laws of the greater number of the States if a bank after notice fails to make good an impairment of its capital.

Sixteen of the States provide in their banking laws that if a bank fails to maintain its required reserve the supervisor shall take action.

A considerable number of States provide more generally that the supervisors shall take action if the bank violates any provision in the banking law or exceeds the powers given it by its charter.

The foregoing contingencies, it will be noted, are definitely stated; the bank is in a certain condition or it has violated definitely formulated laws. Within the past few years, however, there has been a growing tendency to give the bank supervisors, in addition, power of a much more indefinite and discretionary character. Authority to "direct the discontinuance of unsafe and unauthorized practices" or similar powers have, in 1910, been conferred on the supervisors in Arizona, California, Iowa, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Washington, and Wisconsin.[a] The provision in the California law of 1909 is typical of the provisions in those States in which the largest powers in this respect have been conferred upon the supervisors. It reads as follows:

> If it shall appear to the superintendent of banks that such bank is conducting business in an unsafe and injurious manner, he must in like manner direct the discontinuance of such unsafe and injurious practices. Such order shall require such bank to show cause, before the superintendent of banks at a time and place to be fixed by him, why said order should not be observed. If upon such hearing it shall appear to the superintendent of banks that such bank is conducting business in an unsafe or injurious manner, or is violating its articles of incorporation or any law of this State, then the superintendent shall make such order of discontinuance final, and such bank shall immediately discontinue all practices named in such order by the superintendent of banks.

There appears to be general agreement among the state supervisors that such an extension of authority is

[a] The national-bank act confers upon the Comptroller of the Currency power to require the restoration of capital and to close an insolvent bank or one which fails to keep the reserve required by the act, but it does not give the Comptroller power to force the discontinuance of practices which he may consider unsafe.

desirable. The grounds for this view have been set forth clearly in recent official and semiofficial reports. In his report for 1907 the superintendent of banks of New York said:

Among the causes contributing to the suspension of the closed institutions was a lack of supervisory power in the superintendent of banks. In some cases the department has called attention to practices which were considered to be unsafe, but without avail. We believe that if the superintendent of banks had had the authority to enforce a discontinuance of such practices several of the state institutions now closed would not have found it necessary to suspend. * * * It is true that he (the superintendent) may address his communications of criticism to offending corporations, but this method of correction is the practical limit to which he may go until conditions have reached such a point as to require his taking possession of the bank or trust company when it shall appear to the superintendent that it is unsafe and inexpedient for such corporations to continue business.

The New York special commission on banks in its report in 1907 said:

Under existing law he (the superintendent of banks) may criticise objectionable practices when they come to his knowledge, and report continued delinquencies to the attorney-general. His criticism is hence in large measure academic and may be given scant consideration by delinquents. The authority to close offending institutions and appoint receivers therefor should be vested in the superintendent, for this reason and others to be discussed presently. Were he clothed with the power to "direct the discontinuance of unsafe practices," no institution would dare continue the same after having been admonished by him.

The committee on uniform laws of the National Association of Supervisors of State Banks, in its report to the convention of 1907, said:

It is of relatively small advantage to the depositors or creditors of a banking institution that the supervisor has the authority to close it after it has become insolvent. It would be of far greater advantage to them if such officer were given authority to insist upon the discontinuance of

unsafe or unauthorized practices, perhaps not technically in violation of the law, but which if persisted in might endanger the solvency of the institution. In the majority of cases this could probably be accomplished by the mere recommendation of the supervisor, but there are always some cases in which violations of good banking practices are not unintentional or due to lack of information, but are deliberate or due to incompetence, and to remedy these, recommendations, unless they are backed by authority, are of little or no avail.[a]

The laws conferring upon the supervisors authority to direct the discontinuance of unsafe practices have been enacted in most of the States so recently that it is not possible to obtain any comprehensive view as to how that power will be used. The following statement issued by the California superintendent of banks late in 1909 probably indicates in a general way the character of the "unsafe practices" which are being repressed by the supervisors:

The framers of the act of 1909 wisely recognized the absolute necessity for centralization of administrative power in one man, a superintendent of banks, and conferred upon the superintendent ample authority for the enforcement of necessary regulations. It is useless to prescribe remedial measures without at the same time conferring ample authority for their proper enforcement. The most striking illustration of this is the power conferred upon the superintendent to direct the discontinuance of harmful and injurious practices. By virtue of the same he has, among other things, directed the discontinuance of the practice of creating indebtedness on overdrafts, an old and vicious custom prevalent in many sections of the State; directed the holding of monthly meetings of boards of directors and their proper assumption of responsibility in the management of the bank's affairs, his position in this matter being greatly strengthened by similar directions of the Comptroller of the Currency, the bonding of officials responsible for the handling of funds, the insurance of bank premises, etc.

[a] Proceedings of the Seventh Annual Convention of the National Association of Supervisors of State Banks, 1908, pp. 17, 35; see also Proceedings of the Eighth Annual Convention, 1909, pp. 13, 14.

The action which the supervisors may take varies in the different States, and also, in some of the States, according to the particular occasion. The powers of the supervisors may be classified as follows: (1) They may apply to the courts for the appointment of a receiver;[a] (2) they may take possession of the bank and then make application for the appointment of a receiver; or (3) they may take possession of a bank and wind up its affairs.

1. *Application for a receiver.*—The application for a receiver was originally in nearly all of the States the only action which might be taken by the supervisor. In a considerable number of States it remains so at present. Such States are Alabama, Florida, Idaho, Kentucky, Louisiana, Maryland, Ohio, Tennessee, Utah, Virginia, and New Hampshire. In several of these States the state official who has charge of the examination of banks can not on his own account institute proceedings for a receiver, but must submit the matter to some other state official or officials. In Alabama, for example, the treasurer, if he finds that a bank is not in a solvent condition, reports the fact to the governor, who institutes receivership proceedings. Under the Maryland banking law, enacted in 1910, the bank examiner in certain contingencies reports to the governor, who, after advising with the attorney-general, causes such proceedings to be instituted as he deems proper. In the greater number of the States, however, the supervisor has been given

[a] At the inauguration of a system of bank supervision the supervisor was not always given power to apply for a receiver. Thus in Wisconsin, until 1901, the bank examiner, if he found a bank insolvent, was authorized merely to publish an account of its condition in a local newspaper.

power on his own account to begin proceedings for a receiver.

2. *Power to take possession.*—As soon as state supervision became fairly well organized, it became clear in many of the States that the application for a receiver failed to cover the needs of the case in an important particular. In the time which necessarily elapsed before a receiver could be appointed the assets of the bank were frequently misapplied by the officers or directors and arrangements were entered into which seriously diminished the fund from which depositors were to be paid. In order to prevent such a dispersion of the assets, the antebellum state banking laws made it the duty of some state official to secure an injunction forbidding the bank to carry on business or to transfer its assets.[a] In Illinois, Connecticut, and New Hampshire, at present, this method of conserving bank assets is still employed. To secure an injunction, however, requires time, and speedy action is desirable. This would, however, probably have been the direction which the state legislation would have taken, if it had not been for the example of the

[a] The New Jersey act of 1889 followed the old method, and may be taken as typical. It read: "Whenever it shall appear as the result of examination that the affairs of any such corporation are in an unsound condition * * * or that it is transacting business * * * in violation of law, it shall be the duty of the attorney-general, on notice by the commissioners, to apply forthwith, by petition or bill of complaint of information, to the chancellor for an injunction restraining such corporation from the transaction of further business, or the transfer of any portion of its assets in any manner whatsoever, and for such other relief and assistance as may be appropriate to the case; and the chancellor being satisfied of the sufficiency of such application, or that the interests of the people so require, may order an injunction, and make other appropriate orders in a summary way." N. J. (1889), 368, Chap. CCXXXIV.

national-bank act, under which the Comptroller of the Currency in certain contingencies takes immediate possession of a national bank. In over two-thirds of the States and Territories the supervisors have been given power to take charge of a bank immediately, and to hold its assets until a receiver is appointed or the application for a receiver is refused. This authority has, in most States, been given somewhat later than the power to apply for a receiver. In a few of the States the supervisor, before taking possession of a bank, must secure the consent of some other state official or officials. Such is the law in Georgia, Montana, and New Mexico.

In a considerable number of States, the power to take possession is conferred only in case of insolvency or in a situation in which the supervisor deems it hazardous for the bank to continue in operation. In other contingencies, less likely to result in loss to the depositors, as, for example, impairment of capital or failure to keep the prescribed reserve, the supervisor can not take possession, but may apply for a receiver. Such distinctions are made in the laws of Colorado, Delaware, Georgia, Indiana, Iowa, Missouri, Montana, Nevada, New Jersey, Rhode Island, South Dakota, Washington, Wisconsin, and Wyoming. The tendency in the recent legislation is, however, in any contingency calling for action, to give the supervisor discretionary power to take immediate charge of the bank.

3. *Power to liquidate.*—Until within the last four or five years, the most striking administrative difference between the national and the state banking systems was

that, while the Comptroller of the Currency had power to appoint a receiver in certain cases for a national bank,[a] the receivers for state banks and trust companies were appointed in all the States by the courts.

For years there has been complaint on the part of the supervisors in several of the States where the systems of bank supervision are well advanced that the results obtained from bank receiverships are far from satisfactory. The chief points of complaint have been the length of the receiverships and the great expense involved. The New York special commission on banks in 1907 thus summed up the objections to the judicial receiverships of banks in that State:

While under our system the compensation of receivers is fixed and appears fairly reasonable, incompetent persons are frequently appointed, which in itself increases the expense; and the fees are often increased by the courts upon special pleas. The number of attorneys to be employed and their compensation are not regulated properly; many matters which might readily be made the subject of adjustment by applying the same principles which obtain as between individuals become subjects of litigation; expensive "references" are necessary, not only for the settlement of contested questions, but upon the occasions of the periodical accounting of receivers. These circumstances cause inordinate legal expenses, largely added to by the notoriously cost-breeding delays in so many of our courts.

Definite comparisons between the cost of bank receiverships under the judicial system and that of receiverships

[a] It is of interest to note that the cases in which the Comptroller may appoint receivers have been much increased since the passage of the national-bank act. Originally, it was only when a bank defaulted on its notes or failed to make good its reserve after thirty days' notice that he could appoint. In 1873 he was authorized to appoint receivers for banks whose capital had not been paid up or had been impaired, and it was not until 1876 that his power was extended to cover cases of insolvency.

under the administrative system provided for in the national-bank act can not be readily made, since the statistics of liquidating banks are not compiled by any of the state bank supervisors in such a way as to give the necessary data. The New York special commission on banks in 1907 found, however, that the expense of winding up the affairs of 16 New York state banks and trust companies for which data were secured was 13.01 per cent of the receipts, while the expense of winding up the 39 New York national banks which failed from 1865 to 1906 was 8.92 per cent.[a]

Various remedies have been tried. As early as 1887 the legislature of California gave the bank commissioners of that State power to examine banks in the hands of receivers; to limit the number and remuneration of employees, and after two years to fix a time for closing the receivership. In 1895 it was provided that if the commissioners showed that a receiver was careless or negligent he was to be removed. That this legislation was not efficacious in correcting the evil may be judged from the fact that in 1909 the California superintendent of banks spoke of the "notoriously extravagant expenses" connected with bank receiverships in that State.

In 11 States and Territories the receivers of state banks are required to report to the supervisors.[b] In six States and Territories banks in the hands of the receivers

[a] Report of the New York Special Commission on Banks, 1907, pp. 21, 45.

[b] These States and Territories are Arizona, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Maine, Michigan, Missouri, Nebraska, Nevada, New Hampshire, and Vermont.

are examined, and a report of the examination is filed with the court which appointed the receiver. In North Carolina receivers are required to obey the orders of the corporation commission "in as far as they do not conflict with the orders or decrees of the court made in the case." In Nebraska and Idaho the fees of the receivers of banks are fixed by the banking laws.

These provisions have entirely failed to remedy the evil, and in the last few years there has been a growing feeling in favor of transferring the administration of the affairs of liquidating banks from the courts to the bank supervisors. This was recommended by the National Association of Supervisors of State Banks in 1908,[a] and in 1910 nine States have made provision therefor.[b] In two of them—West Virginia and Kansas—the state supervisors have been given power in certain contingencies to appoint receivers. In West Virginia the supervisor appoints with the consent of the governor; in Kansas the entire responsibility for the appointment rests upon the supervisor. In seven States—California, New York,

[a] Proceedings of the Seventh Annual Convention of the National Association of Supervisors of State Banks, 1908, pp. 22, 40.

[b] In two other States—Michigan and Rhode Island—recent legislation authorizes but does not require the appointment of the supervisor as receiver. In Michigan the courts may appoint the commissioner, his deputy, or one of the bank examiners as receiver. If a member of the banking department is appointed, he serves without further compensation than his salary, and all fees and expenses awarded him are turned into the state treasury. In Rhode Island the commissioner may make application for the appointment as receiver of a failed bank of himself or his deputy. Such receivers serve without expense to the liquidating corporation and legal advice is to be given them without charge by the attorney-general or his assistant.

Texas, Wisconsin, Minnesota, South Dakota, and Oklahoma—the administration of the liquidating bank is placed directly in the hands of the state supervisor, who may appoint agents to assist him.[a]

The legislation authorizing the liquidation of banks by the supervisors is so recent that the results can not be stated. The superintendent of banks of New York reported in 1909 that the expense of liquidation for one trust company had been about 1 per cent of receipts and for another two-thirds of 1 per cent. The assets in neither case had, however, been fully administered. Apart from the question of expense one great advantage of liquidation by the supervisor is that at any time the bank can be turned back to the stockholders if they see fit to comply with the requirements of the supervisor. In most, if not all, of the States considerable difficulty and expense are involved in getting rid of a judicial receivership. In several States where liquidation by the supervisor is not provided for, provision has been made that a bank may place itself voluntarily at any time in charge of the supervisor. By doing so the bank is able to ward off an expensive receivership for a time, and meanwhile arrangements may be made by the stockholders either for paying off the depositors or resuming business.

THE SUPERVISORS.

The few effective systems of state bank supervision which survived the almost complete conversion of the state banks caused by the imposition of the 10 per cent tax

[a] In New York the superintendent of banks may, if he sees fit, apply to the courts for the appointment of a receiver.

upon their notes were of two types. In Connecticut, Massachusetts, and New Hampshire supervisory powers over state banks were lodged in the hands of boards of bank commissioners. In New York and Maine a single official, known in New York as the superintendent of banks and in Maine as the bank examiner, was charged with similar supervisory duties. The preference for boards of commissioners over a single official in the three first-named States was due to the fear that an official acting alone might abuse the powers vested in him. The plan of vesting supervisory powers in a board of officials rather than in a single official was followed in the California banking law of 1878. The tendency in recent years, however, has been in the direction of having a single official in charge of bank supervision. In 1909 the California bank commissioners were replaced by a superintendent of banks, and in 1906 the old board of savings bank commissioners of Massachusetts, by a bank commissioner. Connecticut and New Hampshire still retain their boards of bank commissioners, and in North Carolina and Virginia the state corporation commissioners are charged with the supervision of state banks.

In many States the more important questions arising in the supervision of banks must be referred by the supervisor to some other state official. In Nebraska, for example, at the present time, a state banking board, which consists of the governor, the auditor of public accounts, and the attorney-general, passes upon all important supervisory matters, such, for example, as the taking possession of a bank. A similar system has been

established in Nevada. A board consisting of the governor and four other members appointed by him, decides when it is necessary to take charge of a bank and other questions of similar character. In Rhode Island a board of bank incorporation, consisting of the bank commissioner, the treasurer, and the attorney-general authorizes the incorporation of new banks; and in various contingencies the commissioner must have the consent of one other member of the board to take action. The tendency however, particularly in those States in which the number of banks under state supervision is large, is to give the supervisor power to act independently of the consent of any other state official.

One other development in the character of state supervision is noteworthy. In many States when the supervision of state banks began, the duty of receiving reports and making examinations was imposed upon some state official who had other duties. In Kentucky, Missouri, and Utah the official selected was the secretary of state; in Florida and Tennessee, the comptroller; in North Dakota and South Dakota, the state examiner; in Delaware, the insurance commissioner; in Alabama, Colorado, Georgia, Maryland, North Carolina, and Wyoming, the state treasurer; in Texas, the commissioner of agriculture, statistics, insurance, and banking; in Arizona, Indiana, Illinois, Ohio, Mississippi, Montana, New Mexico, Iowa, Pennsylvania, Rhode Island, Virginia, and Washington, the state auditor. In many of these States the increasing importance of bank supervision has led to the creation of a separate and distinct office, the incumbent of which, known

variously as the state bank commissioner, the state bank examiner, or the superintendent of banks, has charge of state bank supervision. This change is a highly important one because the officials thus placed in charge of bank supervision are usually appointed officers who are required to have certain special qualifications.

II. Trust Companies.

When trust companies first became important enough to attract legislative attention, they were generally considered to be institutions of widely different character from banks of discount and deposit. The earlier legislation consequently differentiated them sharply from banks in the character of supervision to which they were subjected. In New York, for example, it was not until 1874 that trust companies were placed under the supervision of the banking department. Trust companies in that State have been examined annually since 1874, while regular examinations of banks began in 1884. The superintendent was not until 1908 specifically given authority to take possession of a trust company in an unsound or unsafe condition, although he has been possessed of such power in the case of a bank since 1892. On the other hand, power to authorize the incorporation of new trust companies was given to the superintendent in 1892; but similar power with reference to state banks was not given until 1908. In several States, on account of their possession of the power to do a bonding and title guaranty business, the trust companies were assimilated, in respect to the supervision to which they were subjected, to insurance companies

rather than to banks. In still other States the trust companies were under the supervision only of the courts.

As the character of the trust company has gradually defined itself, and the banking side of its business has become more and more important, the legislatures in most of the States have gradually assimilated the supervision of trust companies to that of state banks.[a]

In the following States the provisions for the supervision of trust companies doing a banking business and for state banks are substantially identical: Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Maryland, Mississippi, Nevada, New Hampshire, New York, North Carolina, Oregon, South Carolina, Tennessee, and Virginia. In Alabama, California, Missouri, Rhode Island, Texas, and Wisconsin[b] the only important additional provision for trust companies is the requirement that the company shall deposit with the supervisor or some other state official a specified sum in securities. In three States—New Jersey, North Dakota, and Ohio—the trust companies are subject to all the supervisory regulations which relate to state banks, and in addition they may be examined by order of the courts. In Arizona, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Montana, Utah, West Virginia, and Wyoming the intention of the legislature appears to have been to assimilate the supervision of trust companies entirely

[a] In Nebraska trust companies do not do a banking business, and are not subject to supervision. In Arkansas no supervision is exercised over either state banks or trust companies.

[b] The requirement that trust companies must make a deposit of securities with some state official is also found in Illinois, Ohio, North Dakota, and Oklahoma.

to that of state banks; but a strict interpretation of the legislation may leave minor differences. In Pennsylvania all of the recent legislation has provided for the same supervision over both classes of institutions; but there remain on the statute books certain supervisory regulations enacted in 1876 and prior thereto which relate to state banks and not to trust companies. These laws are largely unimportant since the same points are covered in nearly all cases by more recent legislation. The differences in New Mexico are of the same general character as those in Pennsylvania.

There are, however, certain States in which the provisions for the supervision of trust companies are markedly different from those for the supervision of state banks. These States are Illinois, Indiana, Michigan, Oklahoma, and South Dakota. An examination of the differences in the character of the supervision provided for state banks and for trust companies in these States fails, however, to disclose any tendency to differentiate the two along clear lines. In Illinois a trust company doing a banking business is subject to the same supervision as a state bank, and is also subject to certain additional supervision as a trust company. The state bank law of Indiana now in force was enacted in 1873, and the trust company law was enacted in 1893. They differ with respect to supervisory regulations in several particulars, but the chief difference is that in the case of a state bank the supervisor has power to take possession in certain contingencies and hold the bank until a receiver is appointed, but he

has not been given this power in the case of trust companies. Similarly, in Michigan, Indiana, Oklahoma, and South Dakota the supervision exercised over trust companies is somewhat less stringent than that exercised over state banks. In none of these States except Indiana is there any considerable number of trust companies, and it may be expected that with the increase in the number of such companies and the development of their banking business there will be a complete assimilation in the character of the supervision exercised over the two classes of institutions.

The supervision exercised over trust companies in those States which do not incorporate state banks but do incorporate trust companies is similar to that exercised in the majority of States over state banks. In the District of Columbia, trust companies are under the same supervision as national banks with the additional requirement that they must deposit a specified amount in securities with the Comptroller of the Currency. In Maine, Massachusetts, and Vermont reports and regular examinations are required. In Maine and Massachusetts examinations by the directors are also required. In Maine the bank commissioner and in Massachusetts the board of bank incorporation, consisting of the bank commissioner, the treasurer, and the commissioner of corporations has authority to refuse to allow the establishment of a new trust company if in their judgment public convenience will not be promoted thereby. In Massachusetts the board of bank incorporation has authority to refuse to allow a trust company to begin a trust business, if they

think it inexpedient. In Maine and Vermont the supervisors do not have authority to take possession of a trust company, but they may conserve its assets by securing an injunction on the transaction of business. On the other hand, the powers given to the bank commissioner in Massachusetts are very large. Power to take possession of trust companies in certain contingencies was given the bank commissioner in 1908, and in 1910 the duty of liquidating banks was imposed on that official. He may direct the discontinuance of unsafe practices, and if his order is disobeyed may take possession of the bank and wind up its affairs.

Table showing growth and present status of state bank and trust company supervision.

STATE BANKS.

	Year reports required.	Year regular examinations authorized.	Year power conferred on state officials to—			
			Apply for receiver.	Take possession pending appointment of receiver.	Appoint a receiver.	Liquidate
Alabama	1903	1903	1903			
Arkansas						
Arizona	1897	1897	1897	1907		
California	1878	1878	1878	1895		1909
Colorado	1877	1907	1907	1907		
Connecticut	(a)	(a)	(a)			
Delaware	1903	1903	1903	1903		
Florida	1869	1889	1889			
Georgia	1891	1889	1895	1907		
Idaho	1905	1905	1905			
Illinois	(a)	1887	1887			
Indiana	(a)	1873	1895	1895		
Iowa	1860	1873	1873	1897		
Kansas	1891	1891	1891	1891	1908	

a Antebellum.

***Table showing growth and present status of state bank and trust company supervision*—Continued.**

STATE BANKS—Continued.

	Year reports required.	Year regular examinations authorized.	Year power conferred on state officials to— Apply for receiver.	Take possession pending appointment of receiver.	Appoint a receiver.	Liquidate.
Kentucky	1869	....	1893	....	....	....
Louisiana	1882	1898	1902	....	....	....
Maryland	1870	1898	1898	....	....	....
Michigan	(a)	1887	1887	1893	....	....
Minnesota	(a)	1878	1889	1889	....	1909
Mississippi	1888	....	....	....	....	....
Missouri	1877	1895	1895	1897	....	....
Montana	1887	1895	1899	1909	....	....
Nebraska	1877	1889	1889	1895	....	....
New Hampshire	(a)	(a)	(a)	....	....	....
New Mexico	1884	1903	1909	1909	....	....
Nevada	1907	1907	1907	1907	....	....
New Jersey	(a)	1889	1889	1899	....	....
New York	(a)	1884	(a)	1892	....	1908
North Carolina	1887	1889	1891	1903	....	....
North Dakota	1890	1890	1893	1897	....	....
Ohio	(a)	1908	1908	....	....	....
Oregon	1907	1907	1907	1907	....	....
Oklahoma	1897	1897	1897	1897	....	1908
Pennsylvania	(a)	1891	1891	[b] 1891	....	....
Rhode Island	(a)	1908	(a)	1908	....	....
South Carolina	1906	1906	1906	1906	....	....
South Dakota	1891	1891	1891	1903	....	1909
Tennessee	(a)	....	(a)	....	....	....
Texas	1905	1905	1905	1905	....	1909
Utah	1888	1888	1898	....	....	....
Virginia	1884	1910	1904	....	....	....
Washington	1886	1907	1907	1907	....	....
West Virginia	1891	1891	1901	1907	1907	....
Wisconsin	(a)	1895	1901	1901	....	1909
Wyoming	1888	1888	1888	1895	....	....

[a] Antebellum.
[b] A preliminary hearing must be held before the attorney-general.

Table showing growth and present status of state bank and trust company supervision—Continued.

TRUST COMPANIES.

	Year reports required.	Year regular examinations authorized.	Year power conferred on state officials to— Apply for receiver.	Take possession pending appointment of receiver.	Appoint a receiver.	Liquidate.
Alabama	1903	1903	1903	....	....	....
Arkansas	....	....	....	....	....	....
Arizona	....	1901	....	....	....	....
California	1891	1891	1891	1895	....	1909
Colorado	1891	1907	1907	1907	....	....
Connecticut	1872	1872	1879	....	....	....
Delaware	1903	1903	1903	1903	....	....
District of Columbia	1890	1890	1890	1890	1890	....
Florida	1889	1889	1889	....	....	....
Georgia	1894	1889	1895	1907	....	....
Idaho	1905	1905	1905	....	....	....
Illinois	1887	1887	1887	....	....	....
Indiana	1893	1893	1893	....	....	....
Iowa	1904	1904	1904	1904	....	....
Kansas	1901	1901	1901	1901	1908	....
Kentucky	1897	....	....	....	....	....
Louisiana	1882	1898	1902	....	....	....
Maine	1883	1883	1883	....	....	....
Maryland	1892	1892	1892	....	....	....
Massachusetts	1888	1888	1888	1908	....	1910
Michigan	1889	1891	1891	....	....	....
Minnesota	1883	1883	1883	1899	....	1909
Mississippi	1897	....	....	....	....	....
Missouri	1895	1895	1897	1897	....	....
Montana	1887	1887	1899	1909	....	....
Nebraska	....	....	....	....	....	....
New Mexico	1903	1903	1909	1909	....	....
Nevada	1907	1907	1907	1907	....	....
New Hampshire	1889	1889	1889	....	....	....
New Jersey	1889	....	1889	1899	....	....
New York	1874	1874	1882	1908	....	1908
North Carolina	1887	1889	1891	1903	....	....
North Dakota	1897	1897	1897	1905	....	....
Ohio	1877	1908	1908	....	....	....
Oregon	1907	1907	1907	1907	....	....

State Banks and Trust Companies

Table showing growth and present status of state bank and trust company supervision—Continued.

TRUST COMPANIES—Continued.

	Year reports required.	Year regular examinations authorized.	Year power conferred on state officials to— Apply for receiver.	Take possession pending appointment of receiver.	appoint a receiver.	Liquidate.
Oklahoma	1901	1901	1901	1901	....	1908
Pennsylvania	1891	1891	1891	1891	....	....
Rhode Island	1877	1908	1908	1908	....	....
South Carolina	1906	1906	1906	1906	....	....
South Dakota	1895	1905	1905	....	....	....
Tennessee	....	....	....	....	....	....
Texas	1905	1905	1905	1905	....	1909
Utah	1890	1898	1890	....	....	....
Vermont	1878	1874	1884	....	....	....
Virginia	1894	1910	1904	....	....	....
Washington	1886	1903	1903	1903	....	....
West Virginia	1891	1891	1901	1907	1907	....
Wisconsin	1885	1895	1905	1905	....	1909
Wyoming	1903	1903	1903	....	....	....

did not exceed 12, and before that time there were during the period over which the investigation extended practically no state banks in Indiana.

Another inquiry, confined to the question of the percentage of claims, was made by the Comptroller in 1899; it was found that 283 of the state, private, and savings banks which failed from 1893 to 1899 and for which information was procurable had paid 56.19 per cent of all claims against them.

It is impossible to gain from the data collected by the Comptroller's office any information as to the rate of insolvency for state banks, since there is no possible way of separating the failures of state banks from those of other classes of banking institutions, such as savings banks, private banks, and trust companies. This difficulty has not always been recognized, and erroneous statements as to the relative safety of state and national banks have resulted. The Indianapolis monetary commission said in its report:

The total number of national banks which have failed since the establishment of the system was, at the end of 1897, 352, or 6.9 per cent, of the 5,095 which had been organized. As against this, 1,234 failures of state banks are known to have occurred in the same period. The total number of state banks in operation during the year 1895–96 was 3,708; adding the 1,234 failed banks, a total of 4,942 is obtained, and though a certain number have doubtless gone into liquidation, or for some other reason do not appear in figures, it seems safe to say that probably about 20 per cent of the total number of state banks organized during the period in question have failed. This would be a percentage nearly three times as high as that of the national banks which failed during the period.[a]

[a] Report of Indianapolis Monetary Commission, p. 277.

It may be doubted if any class of banks in this country, even in an entire absence of regulation, would show as high a rate of insolvency as that ascribed to state banks by the commission. Regulation of the banking business is undoubtedly helpful in keeping down the number of failures, but to suppose that, if banks were left to go with a free rein, they would fail three times as often, is to overrate the value of governmental oversight quite as much as it has been common to undervalue it.

Fortunately, we have still another source of information as to the failures of state banks. Since 1892 the Bradstreet Company has furnished the Comptroller annually with information by States as to all bank failures in the country. The banks are classified into state, savings, and private. The tables on pages 186 and 189, compiled from this source, form the only accurate body of statistics as to the number of state bank failures.[a]

From 1892 to 1899, inclusive, there were, according to the Bradstreet reports, 380 failures of state banks; but this does not include the entire number of insolvencies which may properly be classed as those of state banks, for, in these returns, state and savings banks are to a certain extent confused.

[a] The statistics of assets and liabilities given by Bradstreet's are, from the nature of the case, merely estimates, and are not included in the table. The statements as to the number of failures have been compared, wherever possible, with returns of insolvencies in official reports, and found to be highly accurate. Since the method of collecting the returns used by Bradstreet's is the same everywhere, there seems no question that, taken as a whole, the reports are correct.

Number of state bank failures, 1892–1899.

State.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	Total.
Maine						1			1
New Hampshire						1			1
Vermont			1						1
Massachusetts									
Connecticut									
Rhode Island		1							1
Total		1	1			2			4
New York	1	6	2	1		2			12
Pennsylvania		2	1						3
New Jersey		1							1
Maryland									
Delaware									
Total	1	9	3	1		2			16
Virginia		5							5
West Virginia		1							1
North Carolina		2							2
South Carolina		1							1
Florida		2	2			1			5
Georgia		3				2			5
Alabama		1				1		1	3
Mississippi	1								1
Louisiana	1	1			2	1			5
Texas	1					1	1		3
Arkansas		2			2	1			5
Tennessee	3	5	2	1					11
Kentucky	1	2	3	1					7
Total	7	25	7	2	4	7	1	1	54
Ohio		3		1					4
Indiana		12			1				13
Illinois					1	1		1	3
Michigan	1	1				2			4
Wisconsin	1	13		1		3	3	1	22
Minnesota		15		2	5	4			26
Iowa		4			4		1		9
Missouri	1	8	2	10	9	8			38
Total	3	56	2	14	20	18	4	2	119
North Dakota									
South Dakota									
Nebraska	4	10	2	18	17	6			57
Kansas	6	25	6	2	7	4	6		56

Number of state bank failures 1892–1899—Continued.

State.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	Total.
Montana	......	3	......	......	......	......	......	......	3
Wyoming	......	1	......	1	......	......	......	......	2
Colorado	......	9	......	......	......	1	......	......	10
New Mexico	......	......	......	......	......	......	......	......	......
Oklahoma	......	......	2	......	......	3	1	......	6
Total	10	48	10	21	24	14	7	......	134
Washington	......	4	2	4	5	1	2	......	18
Oregon	......	4	1	......	......	......	......	......	5
California	......	19	......	......	1	......	......	2	22
Idaho	......	3	......	2	......	......	......	......	5
Utah	......	1	1	......	......	......	......	......	2
Nevada	......	......	......	......	......	......	......	......	......
Arizona	......	1	......	......	......	......	......	......	1
Total	......	32	4	6	6	1	2	2	53
Total for United States	21	171	27	44	54	44	14	5	380

In some States stock savings banks are classed as state banks; consequently a part of the bank failures classified by Bradstreet's as those of savings banks should be included in state bank insolvencies. The total number of failures of savings banks was 92, and, of these, 26 were in States where there was no possibility of confusion, because the state banks and savings banks are separated. There will, therefore, have to be added to the 380 state bank failures 66 of stock savings banks. Also, in one of the years covered by the reports, 1892, the figures as given in the table extend only over six months. The Comptroller of the Currency, in his report for 1893 (p. 13), gave the number of state bank failures for the latter half of 1892 as 18. Making these additions, the total number of insolvencies of state

banks for the years 1892–1899, inclusive, is found to be 464, or an annual average number of 58.

The average number of state banks in operation during the years 1892–1899, inclusive, was 3,864. It will be noted, however, that in the table no returns are given of insolvencies for North Dakota and South Dakota.[a] The average number of state banks in operation in these States during the eight years was 167. Making this deduction we have 3,697 as the average number of state banks in operation from 1892 to 1899 in the States covered by the statistics.

It appears, therefore, that in the years 1892–1899 the annual number of failures of state banks was 1.5 per cent of the average number of banks in operation during that period. In the same period 225 national banks failed. The average number of such banks in operation was 3,703, so that the annual rate of insolvency was seventy-six hundredths of one per cent, or something more than half of that of state banks.

At first sight this conclusion seems to prove the much higher safety of the national banks, but some consideration will lead us to see that the difference in the rate of insolvency is by no means so significant as it appears. The period 1892–1899 was an abnormal one. The most lengthy and severest depression in the history of the United States extended over the greater part of these years. This depression had a far greater effect in those parts of the

[a] Incomplete returns are given in the Bradstreet reports for several of the years for these two States, but since no information is available as to how far the failures reported represent the total number it has seemed best to omit all data for these two States.

country in which the state banks are numerically strongest than in other sections. Out of a total of 4,200 state banks in operation in 1899, nearly 3,500 were located in the Southern, Western, and Pacific groups and in the more westerly States of the Middle Western group. On the other hand, of 3,590 national banks in operation in the same year, only 1,570 were in these States. It is possible to determine with some exactness what effect this difference in location between the two classes of banks has had on the differences in their rates of insolvency. Of the 225 failures of national banks from 1892 to 1899, 164 were in the groups named. Since the number of national banks located there was 1,570, the annual rate of failures was, therefore, about 1.3 per cent, or approximately the same as that for the state banks taken as a whole.

Number of state bank failures, 1900–1909.

State.	1900.	1901.	1902.	1903.	1904.	1905.	1906	1907.	1908.	1909.	Total.
Maine	....	....	....	....	....	....	....	....	....	....	......
New Hampshire	....	....	....	....	....	....	....	....	....	....	......
Vermont	....	....	....	....	....	....	....	....	....	....	......
Massachusetts	....	....	....	....	....	....	....	....	....	....	......
Connecticut	....	....	....	....	....	....	....	....	....	....	......
Rhode Island	....	....	....	....	....	....	....	....	....	....	......
Total	....	....	....	....	....	....	....	....	....	....	......
New York	....	....	1	....	2	2	....	....	7	....	12
Pennsylvania	....	....	....	....	2	....	....	....	2	2	6
New Jersey	....	....	....	....	....	....	....	....	....	....	......
Maryland	....	1	1	....	1	....	....	....	....	....	3
Delaware	....	....	....	....	....	....	....	....	....	....	......
Total	....	1	2	....	5	2	....	....	9	2	21
Virginia	....	....	....	....	1	....	....	....	....	....	1
West Virginia	....	....	....	....	1	....	....	1	1	....	3
North Carolina	....	....	....	....	3	2	1	....	....	....	6
South Carolina	1	....	....	....	1	....	....	....	....	1	3
Florida	....	....	....	1	....	....	....	....	....	....	1

Number of state bank failures, 1900–1909—Continued.

State.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.	Total.
Georgia			2	1		1			2		6
Alabama				1	1						2
Mississippi	1					1	2	1	2		7
Louisiana	1										1
Texas							2		1		3
Arkansas		1		2	3		2	1	6	2	17
Tennessee			1		2	1	1		3		8
Kentucky	1						1		1		3
Total	4	1	3	5	12	5	9	3	16	3	61
Ohio			1		4	2	1		2	2	12
Indiana									1		1
Illinois	1				1			1		1	4
Michigan						2				3	5
Wisconsin					2	1					3
Minnesota	1				1					1	3
Iowa					1		2				3
Missouri						1	1		1		3
Total	2		1		9	6	4	1	4	7	34
North Dakota			1				1			1	3
South Dakota	1	1			3			1			6
Nebraska		1	2	1				1			5
Kansas	1	3			1				3	1	9
Montana											
Wyoming					1						1
Colorado			1		1						2
New Mexico											
Indian Territory					1			2			3
Oklahoma					3	1					4
Total	2	5	4	1	10	1	1	4	3	2	33
Washington		1	1			1	1	2	2	4	12
Oregon	1								1	1	3
California			1						3		4
Idaho									2		2
Utah											
Nevada									2		2
Arizona					1	1					2
Total	1	1	2		1	2	1	2	10	5	25
Total for U. S.	9	8	12	6	37	16	15	10	42	19	174

This view is confirmed by the statistics for the years 1900–1909, inclusive. In this period, 174 failures of state banks were reported. The number of failures of savings banks is reported as 61; and, of these, 35 are in States where the state banks do an extensive savings bank business. Adding these failures, we have a total number of 209 failures of state banks, or an annual average of 21. The average number of state banks in operation during the years 1900–1909 was 7,800, and the annual percentage of failures was twenty-seven one-hundredths of 1 per cent. During the same period there were 118 failures of national banks, or an annual average of 11.8. The average number of national banks in operation was 5,310. The annual percentage of failures was twenty-two one-hundredths of 1 per cent. It appears, therefore, that so far as the number of failures is concerned the difference between the state and the national banks is not great. It is highly probable, however, that the percentage paid on claims in the case of failed national banks is much higher than that for state banks.[a]

Trust companies.—The statistics of the number of the failures of trust companies are less trustworthy than those of the state banks. In the first place, the Bradstreet reports include for certain years in the failures of trust companies those of loan and investment companies. In the second place, the trust companies in a considerable number of States where the development of trust companies has not been large are included among

[a] See above, p. 169.

state banks. Any statement, therefore, must be in the nature of a somewhat rough estimate.

Number of trust company failures, 1892–1899.

States.	1892.	1893.	1894.	1895.	1896.	1897.	1898.[a]	1899.	Total.
Maine									
New Hampshire		3				1			4
Vermont									
Massachusetts	1					1			2
Connecticut									
Rhode Island									
Total	1	3				2			6
New York	1							1	2
Pennsylvania				1	1		1		3
New Jersey									
Maryland									
Delaware									
Total	1			1	1		1	1	5
Virginia					1				1
West Virginia									
North Carolina									
South Carolina									
Florida			1						1
Georgia		1	2						3
Alabama								1	1
Mississippi									
Louisiana									
Texas		1				1			2
Arkansas									
Tennessee			1						1
Kentucky									
Total		2	4		1	1		1	9
Ohio									
Indiana									
Illinois									
Michigan									
Wisconsin									
Minnesota		2				1			3
Iowa		2				2[b]			4
Missouri		2					1		3
Total		6				3	1		10

[a] Includes loan and trust, mortgage, and investment companies.
[b] Includes mortgage investment companies.

Number of trust company failures, 1892–1899—Continued.

States.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	Total.
North Dakota	......	......	......	......	......	......	......	......	......
South Dakota	......	......	......	......	......	......	......	......	......
Nebraska	1	1	1	......	......	1	......	......	4
Kansas	......	......	......	......	......	......	......	......	......
Montana	......	......	......	......	......	......	......	......	......
Wyoming	......	......	......	......	......	......	......	......	......
Colorado	......	......	......	......	......	......	......	......	......
New Mexico	......	......	......	......	......	......	......	......	......
Oklahoma	......	......	......	......	......	......	......	......	......
Total	1	1	1	......	......	1	......	......	4
Washington	......	1	......	......	1	1	......	......	3
Oregon	......	......	......	......	......	......	......	......	......
California	......	......	......	......	......	......	......	......	......
Idaho	......	......	......	......	......	......	......	......	......
Utah	......	......	......	......	......	......	......	......	......
Nevada	......	......	......	......	......	......	......	......	......
Arizona	......	......	......	......	......	......	......	......	......
Total	......	1	......	......	1	1	......	......	3
Total for United States	3	13	5	1	3	8	2	2	37

Number of trust company failures, 1900–1909.

State.	1900.	1901.[a]	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.[b]	Total.
Maine									1	1	2
New Hampshire											
Vermont											
Massachusetts					2						2
Connecticut											
Rhode Island									1	1	2
Total					2				2	2	6
New York	1	1				1			4	2	9
Pennsylvania					1	1		3	1	1	7
New Jersey				1							1
Maryland					2				1		3
Delaware											
Total	1	1		1	3	2		3	6	3	20
Virginia											
West Virginia											
North Carolina					1						1
South Carolina							1				1
Florida											
Georgia											
Alabama				1							1
Mississippi											
Louisiana											
Texas											
Arkansas							1		2		3
Tennessee			1				2		1	1	5
Kentucky									2		2
Total			1	1	1		4		5	1	13
Ohio									4		4
Indiana					1						1
Illinois											
Michigan											
Wisconsin		1									1
Minnesota											
Iowa											
Missouri		1							1		2
Total		2			1				5		8
North Dakota											
South Dakota									1		1
Nebraska											

[a] The statement for 1901 is headed "Loan companies."
[b] The statement for 1909 is headed "Loan and trust companies."

Number of trust company failures, 1900–1909—Continued.

State.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908	1909.	Total.
Kansas	....	....	....	....	....	....	....	....	....	....	....
Montana	....	....	....	....	....	....	....	1	....	....	1
Wyoming	....	....	....	....	....	....	....	....	....	....	....
Colorado	....	....	....	....	....	....	....	....	....	....	....
New Mexico	....	....	....	....	....	....	....	....	....	....	....
Oklahoma	....	....	....	....	....	....	....	....	....	....	....
Total	....	....	....	....	....	....	....	1	1	....	2
Washington	....	....	....	....	1	....	....	....	....	....	1
Oregon	....	....	....	....	....	....	....	....	3	....	3
California	....	1	....	....	....	....	....	....	1	....	2
Idaho	....	....	....	....	....	....	....	....	....	....	....
Utah	....	....	....	....	....	....	....	....	....	....	....
Nevada	....	....	....	....	....	....	....	....	2	....	2
Arizona	....	....	....	....	....	....	....	....	....	....	....
Total	....	1	....	....	1	....	....	....	6	....	8
Total for U. S.	1	4	1	2	8	2	4	4	25	6	57

The Bradstreet returns, after the deduction as far as possible of investment companies, show 94 failures in the eighteen years from 1892 to 1909, inclusive, or an annual average number of 5.2. The average number of trust companies in operation during the same years was 650, or possibly as many as 700, if those included among state banks are reckoned in. The annual average rate of failures was therefore approximately eighty-five one-hundredths of 1 per cent. If, however, the statistics are divided into two periods, as in the case of state banks, it appears that the average annual rate of insolvency for trust companies from 1892 to 1899 was one and nine-tenths per cent, whereas in the period from 1899 to 1909 the rate of insolvency was sixty-two one-hundredths of 1 per cent.

Part II

The Growth of State Banks and Trust Companies

THE GROWTH OF STATE BANKS AND TRUST COMPANIES.

CHAPTER I.

THE INCREASE IN THE NUMBER OF STATE BANKS AND TRUST COMPANIES.

STATE BANKS.

During the past thirty years there has been a remarkable increase in the number of state banks. This increase, however, partly because complete statistics have not been accessible, has been little remarked until recently.[a] Since 1873 the Comptroller of the Currency has collected and published in his annual reports statistics of state banks, but complete data for compiling these statistics have been available only for those States in which the banks were required to report to some state official. The result has been that, particularly in the earlier years, the statistics as published in the Comptroller's report cover only a part of the whole number of state banks.[b] In recent years, however, these statistics are practically complete, since in all except a few States the state banks are now required

[a] In his report for 1897 (vol. 1, p. xxxiii), the Comptroller of the Currency said: "By reference to the statement of the resources and liabilities of the state banks from 1873 to 1897 it will be noticed that with but one exception there has been an uninterrupted increase in the number of banks reporting, which is due rather to legislative action providing for the collection of banking statistics than to an actual increase in the number of existing banks, although there has been a normal increase each year."

[b] See below, p. 244.

to make reports. The following parallel columns show the lack of correspondence for many of the years between the number of state banks as given by the Comptroller and the approximately correct number:

Years.	State banks as given in the Report of the Comptroller of the Currency.	Approximately correct number of state banks.[a]
1877	592	794
1878	475	807
1879	616	813
1880	620	811
1881	652	816
1882	672	832
1883	754	926
1884	817	1,017
1885	975	1,124
1886	849	1,207
1887	1,413	1,531
1888	1,403	1,746
1889	1,671	2,097
1890	2,101	2,534
1891	2,572	3,102
1892	3,191	3,484
1893	3,579	3,700
1894	3,586	3,705
1895	3,774	3,818
1896	3,708	3,917
1897	3,857	3,978
1898	3,965	4,062
1899	4,191	4,253
1900	4,369	4,405
1901	4,983	4,906
1902	5,397	5,433
1903	5,962	6,111
1904	6,923	6,984
1905	7,794	7,920
1906	8,862	9,334
1907	9,967	10,352
1908	11,220	11,295
1909 [b]	11,292	....

[a] See below, pages 243–248, for method of obtaining figures in this column.
[b] From special report of April 28, 1909, made by the banks to the National Monetary Commission, exclusive of banks in island possessions.

It will be seen that the increase in the number of state banks has been especially rapid since 1886. In that year they were far outnumbered both by private and by national banks, but by 1899 they were the most numerous class of banking institutions in the United States. Since 1899 their rate of increase has been even greater. The following table shows the number of national banks, state banks, private banks, and trust companies at certain dates: [a]

	1879.	1884.	1889.	1894.	1899.	1904.	1909.
National banks	2,048	2,625	3,239	3,770	3,583	5,331	6,893
State banks	813	1,017	2,097	3,705	4,253	6,984	11,292
Private banks	2,545	3,458	4,215	3,844	4,168	5,484	4,407
Trust companies	37	44	63	228	276	924	1,079

Of the whole number of banks and trust companies in the United States on January 1, 1910, nearly one-half were state banks; and, if we deduct from the number of private banks the large number of brokers so classified who do not do a banking business, the state banks are considerably more than one-half of the total. In 1879 less than one-sixth of the total number of banks and trust companies were state banks.

The increase in the number of state banks has by no means been uniform in the different sections of the country. The number of state banks in the different

[a] The number of national banks is taken from the Reports of the Comptroller of the Currency; the numbers of private banks, state banks, and trust companies are from Tables I, II, and III in Appendix A. The method of compiling these tables is explained below, pages 243–250.

groups of States for the years 1879, 1889, 1899, and 1909 is shown in the following table:

Number and percentage of increase of state banks, by groups of States, for the years 1879, 1889, 1899, and 1909.

Group.	1879.	1889.		1899.		1909.	
	Number.	Number.	Percentage of increase.	Number.	Percentage of increase.	Number.	Percentage of increase.
New England	19	22	16	23	5	19	−17
Eastern	189	253	34	334	32	387	16
Southern	204	464	127	1,071	131	3,312	209
Middle Western	295	675	129	1,594	136	3,717	133
Western	42	528	1,157	956	81	3,026	216
Pacific	64	155	142	275	77	831	202
Total	813	2,097	158	4,253	102	11,292	165

It will be noted that the greatest increase in the number of state banks has been in the Southern, Middle Western, Western, and Pacific States. In the New England States the number of state banks is exactly the same as in 1879, and in the Eastern States the increase in the number of state banks has been small.

Not only in the increase of state banks but also in their present importance, compared with national banks and trust companies, the same broad division of the States may be made. The following table shows the relative strength in number and capital of the three classes of banking institutions for the year 1909:

Number and capital of national and state banks and trust companies, by groups of States, on April 28, 1909.

[Capital expressed in millions of dollars.]

Group.	National banks.		State banks.		Trust companies.	
	Number.	Capital.	Number.	Capital.	Number.	Capital.
New England	483	101.8	19	3.0	155	33.0
Eastern	1,542	320.9	387	52.4	475	204.0
Southern	1,399	143.5	3,312	114.3	131	23.4
Middle Western	1,969	248.8	3,717	137.4	228	81.2
Western	1,120	61.2	3,026	48.9	34	4.1
Pacific	375	56.7	831	54.4	56	16.6
Total	6,888	933.2	11,292	410.7	1,079	362.7

In the New England and Eastern States, the state banks fall far behind both the national banks and the trust companies in number as well as in aggregate capital. Only a little more than 2 per cent of the capital invested in the New England States in the three classes of banking institutions is represented by the capital of the state banks. The state banks are somewhat more important in the Eastern States, but less than 10 per cent of the banking capital in this group of States is represented by the capital of the state banks. In all the other groups of States the state banks are more numerous than either the national banks or trust companies. In none of these groups, however, is the capital invested so great as that invested in national banks, although in all of them it is greater than the amount invested in trust companies. In the Western and Pacific groups, however, the amount of the capital of the state banks approximates that of the national banks. In the Southern States the capital of the state banks is in amount nearly four-fifths of that of

the national banks, and in the Middle Western States a little more than one-half.

TRUST COMPANIES.

The rapid increase in the number of trust companies began much later than the increase in the number of state banks. The number in the entire United States did not exceed 100 until 1888, and the number of accessions was not large until 1899. Since that time the increase has been very rapid. According to the reports made to the National Monetary Commission, on April 28, 1909, nearly 1,100 trust companies were actively engaged in business.

The great development of the trust company has been almost entirely in the New England, Eastern, and, to a less extent, in the Middle Western States. Nearly one-half of all the trust companies in the United States are in the New England States, Pennsylvania, and New York. As will be noted from the table on page 203, the capital of the New England trust companies is approximately one-third of that of the New England national banks, and the capital of the trust companies of the Eastern States is nearly two-thirds of that of the national banks in those States. In both of these groups the trust companies are far more numerous and of a much greater aggregate capital than the state banks. In the Southern, Middle Western, Western, and Pacific groups the trust companies are far less numerous and far less important, measured by the amount of their capital, than either the national or the state banks.

CHAPTER II.

CAUSES OF THE GROWTH OF STATE BANKS AND TRUST COMPANIES.

STATE BANKS.

Since private and national banks as well as state banks are banks of discount and deposit, the disproportionate increase in the number of state banks must be explained by their superior advantages over one or both of the classes competing with them. It must be noted, however, that the fields of operation of national and of private banks are for the most part mutually exclusive, for very few private banks have a capital sufficiently large to enable them to organize under the national-bank act.[a] The state

[a] According to the returns made to the internal-revenue officials in 1882, the average capital of private banks in the United States was $33,000. In the Middle Western States, where they were numerically strongest, the average capital was under $20,000. According to the returns made to the National Monetary Commission on April 28, 1909, the average capital of the private banks reporting was $18,000, and in the Middle Western States, where about two-thirds of the reporting banks were located, the average capital was $11,000. The returns to the Monetary Commission do not include to any considerable extent houses whose business is confined to brokerage and exchange. In a few States official reports are made by the private banks to the state bank supervisors. Presumably the amount of the capital of the private banks so reporting is fairly representative of the same class of banks in other States. The capital of the 381 private banks whose capital is thus reported in the latest official reports was as follows:

$5,000 or less	32
Over $5,000 and less than $10,000	5
$10,000 and less than $15,000	211
$15,000 and less than $20,000	33
$20,000 and less than $25,000	28
$25,000 and less than $50,000	42
$50,000 and less than $100,000	20
$100,000 and less than $200,000	5
$200,000 and over	5
Total	381

bank, on the contrary, is a rival of both the other classes, since the amount of capital required to incorporate a state bank is in most of the States small enough to make it possible for private banks to become incorporated if they desire to do so. The causes, then, which ~~have led to the~~ increase of state banks may be divided into two categories according as they have been influential in giving the state bank an advantage over the private or over the national bank.

STATE VERSUS PRIVATE BANKS.

There are two distinct functions which private banks fulfill: (1) As an adjunct to the brokerage business in large cities; (2) as a means of furnishing credit in small communities, chiefly in agricultural sections. It is in the latter of these capacities that they enter the same field as the small state banks. The chief characteristic of both classes of banks is their small capital. In a section with a sparse population, if there are to be banks at all, they must be of small capital, since the business which can be obtained does not justify the investment of large sums.

The westward extension of the settled area in this country has continually called into existence banks of small capital. In 1850 the banks of Ohio, Indiana, and Illinois, even those issuing notes, were small compared with similar credit agencies in the East. There is evidence also, although statistics can not be cited, that in addition to the incorporated banks with $25,000 capital of Ohio, Indiana, and Illinois, there were numerous private banks in the smaller places.[a]

[a] Thus, for instance, in Davis *v.* McAlpin (1858), Ind., 10; 137, the supreme court of Indiana said: "Private banks of discount and deposit must have existed to a very limited extent, if at all, in the early period of our legislation. But in later years they have become numerous and are discharging a large portion of the banking business."

When the national bank took the place of the state bank, a still wider field was left for the private bank, since under the national-bank act until 1900 a bank might not be incorporated with a smaller capital than $50,000. By the act of March 14, 1900, national banks may be incorporated with a capital of $25,000 in towns of less than 3,000 population. The following table shows with what rapidity, under these conditions, the growth of private banks proceeded:

Number of private banks in the United States.[a]

1877	2,432
1888	4,064
1899	4,168
1909	4,407

In the period 1877–1888 the rate of increase of private banks was over 67 per cent; but from 1888 to 1909 it was less than 9 per cent. This has come about despite the fact that the number of private banks in the large cities has been constantly increasing. The diminution in the number of private banks in the small towns has nearly counterbalanced the increase of brokers' banks.

An estimate as to the increase of brokers' banks may be made by taking separately the number of private banks in the States of New York, Massachusetts, Pennsylvania, and Illinois. In all these States except Illinois the great mass of private banks consists almost wholly of brokers' banks; and in Illinois, though the percentage is not so high, brokers' banks constitute a very large part of the total number.

[a] See Table III, Appendix A.

Number of private banks.

	1877.	1888.	1899.	1909.
Massachusetts	52	74	160	173
New York	289	256	446	902
Pennsylvania	306	243	316	366
Illinois	282	441	599	823
Total	929	1,014	1,521	2,264

Deducting the number of private banks in these four States from the total number, we find that the number of private banks in the remaining States for these years was as follows:

1877	1,503
1888	3,050
1899	2,647
1909	2,143

It will be noted that in the remaining States taken together there has been a steady decrease in the number of private banks since 1888. It appears probable that in 1909 there were not more than 1,500 private banks exclusive of brokers' banks, while in 1888 only a very small part of the 4,000 private banks were brokers' banks.

That this decrease in the number of private banks has been caused in large degree by the preference of the banks for incorporation is evident from the increase in the number of small state banks. The number of state banks with a capital of less than $50,000 has increased as follows:

1877	187
1888	747
1899	2,529
1909	8,980

The great mass of the state banks with a capital of less than $50,000 are in the Southern, Middle Western, and Western States. In 1888 there were in these three groups

of States 3,300 private banks and 700 state banks with a capital of less than $50,000. In 1909 in the same groups there were 2,673 private banks, 8,300 state banks with less than $50,000 capital, and 5,600 state banks with less than $25,000 capital.

In the New England and Eastern States neither small state banks nor private banks, except brokers' banks, have been numerous during the period under consideration. In some of these States state banks are not incorporated, and in several others the amount of capital required is large, $25,000 or $50,000. But the chief reason for the small number of private and small state banks in these States is that the economic conditions do not make banks with less than $50,000 capital profitable.

The chief reason for the partial supplanting of the private bank by the small state bank is the advantage of the corporate form of organization in giving greater security to the depositor and consequently in increasing the credit of the bank. The desire to obtain a charter can not become effective, however, unless the amount of capital required is small enough to permit the private banks to make the conversion. If the business of a locality will only support a bank with a capital of $10,000, and the state banking laws require a minimum capital of $25,000 for an incorporated bank, the additional credit which might be obtained through incorporation will not be a sufficient inducement to bring about the change to the state system. In several of the Eastern and Middle Western States the decrease in recent years in the amount of capital required for the incorporation of state banks has been largely responsible for the diminution in the number of private banks.

Number of private and small state banks for the years 1877, 1888, 1899, and 1909.

	1877.		1888.		1899.		1909.		
	State banks with less than $50,000 capital	Private banks	State banks with less than $50,000 capital.	Private banks.	State banks with less than $50,000 capital.	Private banks.	State banks with less than $50,000 capital.	State banks with less than $25,000 capital	Private banks.
Maine	....	8	....	12	....	8	....	....	12
New Hampshire	....	2	....	3	....	2	3	....	1
Vermont	....	1	....	2	....	1	....	....	1
Massachusetts	....	52	....	74	....	160	....	....	173
Rhode Island	....	5	....	7	....	11	....	....	15
Connecticut	....	14	....	19	....	16	....	....	31
Total New England States	....	82	....	117	....	198	3	....	233
New York	....	289	12	256	63	446	75	1	902
New Jersey	....	10	8	6	....	4	3	....	3
Pennsylvania	30	306	....	243	....	316	4	1	366
Delaware	....	3	....	3	....	4	7	1	1
Maryland	....	23	2	19	6	43	53	33	100
District of Columbia	....	....	....	....	....	....	....	....	12
Total Eastern States	30	631	22	527	69	813	142	36	1,384
Virginia	18	30	24	30	47	27	160	113	41
West Virginia	6	8	12	3	47	4	94	11	7
North Carolina	....	9	4	23	29	24	256	214	13

South Carolina	2	19	8	22	29	19	153	100	17
Georgia	3	39	4	71	42	42	335	180	59
Florida	....	8	1	27	13	11	71	47	13
Alabama	....	17	1	49	8	34	128	70	17
Mississippi	2	21	3	15	56	5	233	134	22
Louisiana	....	7	....	14	36	8	131	76	18
Texas	3	73	3	130	....	187	264	181	186
Arkansas	....	12	8	20	63	14	267	192	17
Kentucky	11	36	27	36	76	32	373	289	13
Tennessee	10	10	10	20	83	9	267	179	15
Total Southern States	55	289	105	460	529	416	2,732	1,786	438
Ohio	16	219	15	250	51	287	278	135	286
Indiana	2	111	11	156	47	222	186	4	204
Illinois	....	282	2	441	86	599	232	....	823
Michigan	2	131	17	220	80	249	243	114	249
Wisconsin	12	70	28	102	87	120	390	252	7
Minnesota	6	49	29	152	114	239	564	442	42
Iowa	13	201	49	423	120	519	166	....	356
Missouri	25	104	141	122	390	110	817	649	98
Total Middle Western States	76	1,167	292	1,866	975	2,345	2,876	1,596	2,065
North Dakota, South Dakota	2	8	50	196					
North Dakota					103	2	439	400	1
South Dakota					94	57	374	333	22
Nebraska	2	30	104	306	313	65	617	480	11
Kansas	14	84	120	365	259	81	592	493	4
Montana	....	5	....	11	5	21	26	8	33
Wyoming	2	5	1	12	6	12	43	34	6
Colorado	1	25	17	69	20	55	67	47	55

Number of private and small state banks for the years 1877, 1888, 1899, and 1909—Continued.

	1877.		1888.		1899.		1909.		
	State banks with less than $50,000 capital	Private banks.	State banks with less than $50,000 capital	Private banks.	State banks with less than $50,000 capital.	Private banks.	State banks with less than $50,000 capital.	State banks with less than $25,000 capital.	Private banks.
New Mexico	....	4	2	10	5	7	32	17	2
Oklahoma	....	....	....	....	56	1	501	443	36
Total Western States	21	161	294	969	861	301	2,691	2,255	170
Washington	....	2	2	14	17	24	156	61	56
Oregon	....	6	2	21	15	20	86	50	21
California	5	65	26	52	44	29	125	2	16
Idaho	....	3	2	16	8	9	106	68	8
Utah	....	7	....	8	4	11	34	12	8
Nevada	....	18	1	10	2	2	13	7	4
Arizona	....	1	1	4	5	....	16	5	4
Total Pacific States	5	102	34	125	95	95	536	205	117
Total United States	187	2,432	747	4,064	2,529	4,168	8,980	5,878	4,407

The growth of small state banks has been much increased in a number of the States by legislation relating to the private banks. The regulation of the business of unincorporated bankers is of comparatively recent origin, and is an outgrowth of the feeling that the banking business, even when confined to discount and deposit, should be subjected to supervision and regulation. The regulation to which private bankers are subjected assumes several forms, which differ considerably in the extent to which they operate to induce private banks to become incorporated.

In a considerable number of States it has been enacted that private bankers must not use a corporate name. The purpose of this provision is to prevent the deception of the public, and some such provision has been particularly urged in those States where incorporated banks are supervised and regulated and private banks are not, although such provisions are found also in States where both private and state banks are under supervision. As early as 1882, in New York, persons doing a banking business, if unincorporated, were forbidden to use a corporate title. At present the use of corporate titles by private banks is forbidden in Wyoming, Michigan, Maryland, and Montana.

In some States private banks are not allowed to use the name "bank" or similar titles on signs or on their advertising. Such provisions are found in the banking laws of Colorado, Connecticut, Delaware, Florida, Minnesota, Maine, Massachusetts, Montana, Rhode Island, and West Virginia. In New Hampshire a private bank may not

use the words "savings bank." In Maryland a private bank may use the words "bank or banker" in connection with the name of the individual or copartnership, but not otherwise. In Texas private banks must place on their signs and advertising matter the word "unincorporated" after the name of the bank. In California private bankers must use their true names. In Washington private bankers must use their own names and must place after the name of the individual or firm the words "private bank."

In another group—Alabama, Arizona, California, Colorado, Florida, Idaho, Indiana, Kansas, Mississippi, Missouri, New Jersey, New Mexico, North Carolina, Oregon, South Carolina, South Dakota, Utah, and Wyoming—an attempt has been made to bring private banks, or in some of the States a certain class of private banks, partially or entirely under the same regulation and supervision as state banks. The regulation of private banks is carried on, however, under difficulties which render it much more imperfect than the supervision of incorporated banks. It has already been noted that the fundamental provision in the systems of bank regulation in the United States is the requirement of a minimum capital. In Arizona, New Mexico, North Carolina, South Carolina, and Florida private bankers are subject to practically the same regulations as state banks, except that they do not need to have a specified capital. Such regulation has proved of comparatively little value; and in the remaining States which provide for the supervision and regulation of private banks, either the private bankers have been required to

give bond as security for the deposits made with them or to have a specified minimum capital.

In Connecticut, Massachusetts, New York, and New Jersey a bond is required of certain classes of private bankers. In these States for many years there has been great complaint that private bankers receive deposits from immigrants and then default in their repayment.[a] In New Jersey, since 1907, persons and firms engaged in transmitting money to foreign countries have been required to obtain a certificate of authority from the commissioner of banking and to give a bond to the commissioner as security for the funds deposited with them for transmission. In Massachusetts steamship agents who sell drafts and receive deposits were required, in 1905, to give a bond of $15,000, but since 1907 the amount of the bond is left to the discretion of the commissioner of banks. Similar legislation was enacted in New York in 1907. In Connecticut, by an act passed in 1907, private bankers are allowed to use the word "banker" in connection with their signs and advertisements provided they deposit with the bank commissioners bond or securities to the amount of $10,000.

Missouri was the first State to adopt the policy ot requiring private bankers to have a specified minimum capital. By an act passed in 1877 private bankers were prohibited from engaging in the business of banking

[a] In his report for 1899 (p. 31) the superintendent of banks of New York said: "In the Hungarian and Italian quarters of that city it has been so common during the past few years for a private banker to disappear overnight that such an occurrence has come to be expected with an almost regular periodicity."

without a paid-up capital of at least $5,000.[a] In 1895 private bankers were subjected to the same supervision as incorporated banks, and it was made the duty of the supervisor to proceed against them in case of impairment of capital.[b] Essentially the same provisions were included in 1889 in the Nebraska banking law. The Kansas banking law of 1891 made bankers "amenable" to all its provisions, and this section of the law has been construed as requiring private banks to have a capital of the same amount as incorporated banks.[c]

In 1910 the laws of California, Colorado, Idaho, Indiana, Kansas, Mississippi, Missouri, New Jersey, Oregon, South Dakota, and Utah[d] require that private banks shall have a specified minimum capital. The same provision was also, until recently, contained in the banking laws of Nebraska and Kentucky. But in almost all of these States a difficulty has presented itself which makes the requirement of a minimum capital but a small protection

[a] Private bankers were defined as those "who carry on the business of banking by receiving money on deposit, with or without interest, * * * and of loaning money without being incorporated." Rev. Stat. (1879), sec. 921.

[b] Laws of Mo. (1895), p. 97.

[c] Laws of Kans. (1891), chap. 43, sec. 35. The commissioner, in his report for 1892 (p. 1) recommended that as to the rights and duties of private banks the law should be made more definite. He said: "While sections 17 and 35 recognize the rights of individuals or partners to do a banking business without incorporating, yet the other sections of the law seem to have been framed for application to incorporated banks only; hence, in the construction of the law, as to its application to private banks, it requires not only a constant recollection of section 35, but a vivid and analytical imagination as well:"

[d] In Alabama and Wyoming private banks are subject to the same regulations as state banks. Apparently this includes the requirement of a minimum capital.

to the depositor. The private banker is frequently engaged in other business enterprises, and in the event of his failure creditors other than depositors come in for a share of the assets. A corporation, on the other hand, can not engage in business other than that prescribed by its charter. In Missouri the law forbids the private banker to use any of the funds of the bank in other business, but he may use other funds; and even without engaging in any other business, he may accumulate an indebtedness which may prove a severe charge on the banking assets.[a] In a case in Nebraska it was held that under the law in that State "an unincorporated bank, exclusively owned by a private individual, is not a legal entity, even though its business be conducted by a president and a cashier, and in such a case the assets of the bank represent merely the portion of the owner's capital invested in banking and he may lawfully dispose of them to pay or secure the just claims of any of his creditors."[b]

[a] The difficulty in the regulation of private banking was very clearly described by the supreme court of Wisconsin in the opinion rendered in the case of Weed *v.* Bergh: "If it should be granted that individual bankers may be successfully subjected to all the provisions as to visitation, inspection, examination, and the making of reports to the same extent as corporations, it still must be conceded that there are at least two well-defined dangers to the public which are and must be present in private banking which are eliminated in corporate banking. The first of these is the danger that the private banker, by engaging in outside business ventures, may subject his banking assets to the claims of business creditors, and thus greatly prejudice if not destroy the remedies of bank depositors, and the second is the danger and inconvenience which is likely to result when a private banker dies and the business has to be temporarily suspended for the purpose of probating the estate, involving perhaps destruction of public confidence and a run on the institution."

[b] Longfellow *v.* Barnard (79 N. W., 225).

In Kansas the difficulty was met by a provision in the law of 1897 that "Any individual or firm doing business as a private bank shall designate a name for such bank, and all property, real or personal, owned by such bank shall be held in the name of the bank and not in the name of the individual or firm; all of the assets of any private bank shall be exempt from attachment or execution by any creditor of such individual or firm until all liabilities of such bank shall have been paid in full. No private banker shall use any of the funds of the bank for his private business."[a] This makes of the private banker essentially a corporation. Similarly, in South Dakota the creditors of a private banker may not attach any of the property or funds of the bank until the creditors of the bank have been paid. In Oregon the assets of the private bank must be kept distinct from other assets of the owner. Under the Indiana act of 1905 the depositors of any private bank have a first lien on the assets of the bank in case it is wound up; and for any balance unpaid they share with general creditors in the general assets.

Several States have dealt even more radically with the problem and allow only incorporated associations to conduct a banking business. The earliest of these laws were those of North Dakota and South Dakota, enacted in 1890 and 1891, respectively. In both States the laws were contested as unconstitutional. The supreme court of North Dakota held that the requirement of incorpora-

[a] Laws of Kans. (1897), chap. 47.

tion was constitutional as a proper exercise of the police power.[a] On the other hand, the supreme court of South Dakota held the provision unconstitutional on the ground that the State could not prohibit any citizen from entering upon a business not injurious to the community, even though affected by a public interest.[b] Grave doubts were thus raised as to the constitutionality of such provisions. More recently, however, a considerable number of States have followed the lead of North Dakota and have forbidden private individuals to engage in the banking business. Such provisions have been placed in the banking laws of Nevada, Oklahoma, Kentucky, Nebraska, Wisconsin, and Virginia. The constitutionality of the Wisconsin provision has recently been upheld by the supreme court of that State.[c]

The legislation described above has all tended in greater or less degree to influence private banks to incorporate. The following table shows for certain years the number of private banks in the two groups of States in which they were in 1877 most numerous and in which the restrictions on their operation have been most important.

[a] State ex rel. Goodsill *v.* Woodman (1 N. Dak., 246).
[b] State *v.* Scougal (3 S. Dak., 55).
[c] Weed *v.* Bergh (124 N. W., 665).

Number of private banks in the Middle Western and Western groups in 1877, 1888, 1899, and 1909.

State.	1877.	1888.	1899.	1909.
Ohio	219	250	287	286
Indiana	111	156	222	204
Illinois	282	441	599	823
Michigan	131	220	249	249
Wisconsin	70	102	120	7
Minnesota	49	152	239	42
Iowa	201	423	519	356
Missouri	104	122	110	98
North Dakota / South Dakota	8	196		
North Dakota			2	1
South Dakota			57	22
Nebraska	30	306	65	11
Kansas	84	365	81	4
Montana	5	11	21	33
Wyoming	5	12	12	6
Colorado	25	69	55	55
New Mexico	4	10	7	2
Oklahoma	....	....	1	36
Total	1,328	2,835	2,646	2,235

It will be noted that the number of private banks in these States has fallen from 2,835 in 1888 to 2,235 in 1909, and that the States in which the greatest decreases have occurred are Wisconsin, Minnesota, North Dakota, Nebraska, and Kansas. In these States, as has been noted above, either private banks have been prohibited or they labor under grave restrictions in the conduct of business.

STATE VERSUS NATIONAL BANKS.

Not only has the number of small state banks increased with great rapidity, but also the number of state banks with capital large enough to permit them to be incorporated as national banks has increased somewhat more rapidly than the number of national banks. The table on the next page shows for certain years the number of each class of banks with a capital of $50,000 and over which were in operation.

State Banks and Trust Companies

Number of state banks and national banks with a capital of $50,000 and over, by States, for the years 1877, 1888, 1899, and 1909.

	1877.		1888.		1899.		1909.	
	State banks.	National banks.	State banks.	National banks.	State banks.	National banks.	State banks.	National banks.
Maine	2	71	......	75	......	82	......	74
New Hampshire	1	46	1	49	......	52	6	50
Vermont	5	46	......	49	......	49	......	44
Massachusetts	......	237	......	253	......	250	......	195
Rhode Island	15	62	10	60	6	56	3	22
Connecticut	4	81	8	84	8	79	7	76
Total New England States	27	543	19	570	14	568	16	461
New York	81	281	110	322	144	327	126	355
New Jersey	12	69	......	85	21	108	17	135
Pennsylvania	83	232	77	313	90	436	126	615
Delaware	6	13	4	18	3	19	9	20
Maryland	15	32	7	48	6	69	26	75
District of Columbia	......	6	......	12	......	12	......	11
Total Eastern States	197	633	198	798	264	971	304	1,211
Virginia	22	19	40	26	42	36	79	78
West Virginia	9	15	14	20	28	34	76	70
North Carolina	3	15	10	18	16	29	30	53
South Carolina	2	12	11	16	35	16	91	27
Georgia	24	12	27	24	71	27	133	78
Florida	......	1	3	13	13	15	26	30
Alabama	6	10	8	21	34	26	80	53
Mississippi	5	......	12	12	36	12	83	26
Louisiana	9	7	6	13	18	20	56	28
Texas	10	12	4	100	......	199	28	340
Arkansas	1	2	5	7	23	7	70	32
Kentucky	43	46	56	69	129	75	54	104
Tennessee	8	25	35	42	56	47	70	67
Total Southern States	142	176	231	381	501	543	876	986
Ohio	28	165	10	219	51	255	126	274
Indiana	11	99	22	94	47	115	78	168
Illinois	30	144	29	182	69	217	187	294
Michigan	24	80	54	109	108	80	128	87
Wisconsin	12	41	36	59	46	78	80	98
Minnesota	7	31	32	56	35	69	43	95

***Number of state banks and national banks with a capital of $50,000 and over, by States, for the years 1877, 1888, 1899, and 1909*—Continued.**

	1877.		1888.		1899.		1909.	
	State banks.	National banks.	State banks.	National banks.	State banks.	National banks.	State banks.	National banks.
Iowa	18	78	77	129	87	172	95	205
Missouri	76	30	97	50	105	63	137	88
Total Middle Western States	206	668	357	898	548	1,049	874	1,309
North Dakota } South Dakota }	.....	1	24	58	3	23	7	34
					1	25	12	33
Nebraska	6	10	54	104	28	100	42	121
Kansas	12	15	57	160	26	98	56	126
Montana	.....	5	5	17	5	21	26	32
Wyoming	.....	2	.....	9	.....	11	3	19
Colorado	4	13	3	34	10	36	10	70
New Mexico	.....	2	2	9	2	6	5	20
Oklahoma	.....	.....	.....	.....	.....	8	19	83
Total Western States	22	48	145	391	75	328	180	538
Washington	.....	.....	2	24	14	31	63	45
Oregon	.....	1	7	27	15	28	34	50
California	38	9	75	38	129	35	196	111
Idaho	.....	1	1	7	4	9	23	29
Utah	.....	1	2	7	7	11	22	14
Nevada	2	.....	2	2	5	1	11	9
Arizona	.....	.....	4	1	2	5	11	10
Total Pacific States	40	12	93	106	176	120	360	268
Total United States	634	2,080	1,043	3,144	1,578	3,579	2,610	4,773

It will be noted that in 1877 the number of state banks with a capital of $50,000 and over was 634, and the number of national banks was 2,080. In 1909 the numbers of the same classes were 2,610 and 4,773, respectively. Measured by the number of accessions, the increase from 1877 to 1888 in the number of national banks with a capital

of $50,000 and over was greater than the increase in the number of state banks with a capital of $50,000 and over. From 1888 to 1909 the absolute increase was approximately the same for the two classes of banks. In all of the periods, however, the percentage of increase has been much greater for the state banks.

Increase in number.

	From 1877 to 1888.	From 1888 to 1899.	From 1899 to 1909.
State banks with a capital of $50,000 and over	409	535	1,032
National banks with a capital of $50,000 and over	1,064	435	1,194

Four prime factors enter into the determination of the relative profitableness of incorporation under the state or national banking systems:

1. In the first place, other things being equal, the system of banking which gives the banks organized under it superior credit will be preferred. For a considerable period after the civil war the national banks, in many of the States, were practically the only incorporated banks of discount and deposit. That they operated under regulations prescribed by the National Government was well known. The first state banks after the civil war in nearly all the States were incorporated on the same terms as ordinary business corporations, and were entirely unregulated and unsupervised. The national banks were therefore regarded by depositors as affording a higher degree of safety than state banks. As the state banking systems have developed the state banks have come to

enjoy, in many states, almost if not quite as much public confidence as the national banks.

In one respect, however, the state banks, even in those States in which the regulation and supervision is of a high order, are at a disadvantage as compared with the national banks. Where there are relations between a person or a bank in one State and a bank in another, and especially in a distant State, the state bank suffers in competition with the national banks, since in most cases the citizens of one State are not acquainted with the merits of the banking laws of another State, whereas they know the general character of the national-bank act. The wider credit thus enjoyed by the national bank is not ordinarily of controlling importance, although it increases in importance with the increasing size of the banks. With one class of banks, however, it is a factor of very great weight. In the States whose economic development is not far advanced a large part of the banking capital is supplied by nonresidents. The stock of national banks is undoubtedly a more attractive investment for nonresident investors than the stock of state banks. Such investors, though well acquainted with the provisions of the national-bank act, are little informed as to the state banking laws. Consequently, the promoters of banks who need a larger capital than they can secure at home frequently prefer to organize under the national system, for by so doing they can attract nonresident investors. In his report for 1897 the Comptroller of the Currency analyzed the distribution of national-bank shares. The following table shows for the

different groups of States the proportionate part held at that time by nonresidents:

Group.	Shares held by—		Percentage held by nonresidents.
	Residents of the State.	Nonresidents.	
New England	1,477,380	122,536	8
Eastern	1,704,928	249,476	14
Southern	556,483	115,169	20
Middle Western	1,380,223	225,228	16
Western	216,601	110,940	51
Pacific	128,422	49,728	38

It is to be noted, also, that within the groups the less-developed States showed a higher percentage of shares held by nonresidents.

2. Secondly, the national banks alone can issue notes and derive a profit therefrom. The large profit on note issue was the primary cause in 1865 and the years immediately following of the conversion of the great mass of state banks into national banks. The same influence was for many years influential in inducing far the greater number of the new banks to incorporate as national rather than as state banks. By 1880, however, the increasing price of United States bonds led to a great reduction in the profit on the issue of bank notes. From March 11, 1882, to February 26, 1891, the national bank-note circulation fell from $323,000,000, or 69 per cent of the capital of the national banks, to $123,000,000, or 18.6 per cent of the capital. The decrease in the amount of the bank-note circulation was greatest in those sections of the country in which the interest rate was highest. This was due to the widening difference between the

amount of notes which might be issued and the cost of the bonds. In order to issue $90,000 of circulation a bank had to deposit bonds of a par value of $100,000, the cost of which in the eighties ran as high as $128,000.[a]

A decline in the price of bonds was chiefly responsible for the slow increase in the amount of the bank-note circulation from 1891 to 1899. On December 2 of the latter year it stood at $204,000,000, or 33.4 per cent of capital. Since then the increase has been rapid, and on September 1, 1909, the national bank-note circulation amounted to $658,000,000, or 69.6 per cent of capital. This great increase in the amount of circulation has been due to the change made by the act of March 14, 1900, in the conditions under which national banks may issue notes. The essential features of that act, in so far as it affected the profit on note issue, were (1) the increase in the amount of notes which might be issued from 90 per cent of the par value of the deposited bonds to 100 per cent, (2) the provision that notes might be issued on the deposit of the 2 per cent consols of 1930, which it was expected would sell at only a little above par.

Under the provisions of this act the profit on note issue is practically the same in all sections of the country, since the difference between the amount of the investment and the amount of notes issued is very small. The average price, for instance, in October, 1909, of $100,000

[a] The diminishing profit in this period on national-bank circulation has been discussed by many writers on banking and currency: White, "Money and Banking," p. 418 et seq.; "Report of the Indianapolis Monetary Commission," pp. 180–191; and by the late Professor Dunbar, "The Bank Note Question." Quar. Jour. Econ., Oct., 1892, p. 55.

of the consols of 1930, on which the mass of the circulation is based, was $101,052.

From 1882 to 1891 the profit on the issue of national-bank notes was so small as to be almost negligible as a factor in inducing banks to prefer incorporation under the national-bank act. Since 1891, however, the national banks as a whole have been able to make some profit from their circulation, and since 1900 a very considerable profit. The Comptroller of the Currency, in his report for 1909, calculated the profit on circulation, based on a deposit of United States consols of 1930, in October, 1909, at 1.344 per cent in excess of 6 per cent on the investment.

3. The provisions of the state banking laws in regard to the character of the loans which may be made by the banks are less stringent than those contained in the national-bank act. The more liberal provisions in the state banking laws with reference to the amount of a single liability[a] are probably not largely influential in causing many banks to incorporate under the state banking laws rather than under the national-bank act; but the power to loan on real estate, which is possessed by nearly all the state banks, is highly valued by many banks. As has been indicated above, however, the banks located in the large places are less desirous of making loans on real estate.[b] Moreover, in the newly settled sections the value of real estate is so uncertain that the banks do not ordinarily make loans on such security.

4. As has been shown above, the reserve requirements in practically all of the state banking laws are lower than

[a] See above, p. 93.

[b] See above, p. 105.

under the national-bank act. These differences are in most States not a matter of very great importance to those state banks which desire to confine themselves to the business of a commercial bank, for the reserves required by the national-bank act are probably no greater than prudent bankers would hold against demand deposits, even in the absence of any legal regulations.[a] But a great part of both the state and national banks do also a large savings and time-deposit business. On April 28, 1909, 6,592 national banks reported to the National Monetary Commission 757 millions of savings deposits; 8,258 state banks reported 597 millions. The national banks must hold the same reserve against savings as against other deposits, whereas in a large number of the States the state banks may hold against savings deposits a lower reserve or none at all. Even where the state banking laws require the same reserve against both classes of deposits the reserve required is so small, except in a few States, that the banks may adjust their reserves so as to hold a very small and yet adequate reserve against savings deposits and a sufficient reserve against demand deposits without falling below the required amount.

On the other hand, the national banks may invest their savings deposits in the same manner as other deposits, whereas in certain States the state banks and trust companies are required to segregate their savings deposits and invest them in high-grade securities.[b] The profit from such deposits is thereby lessened. In such States, the advantage of the lower reserve requirement is partially or

[a] See, however, below, p. 235.

[b] See above, p. 22.

entirely counterbalanced by the restrictions on investment. As yet, however, the segregation of savings deposits is required in only a few States.

Several of the factors, noted above, in the relative profitableness of incorporation under the state or national banking systems vary in strength, according to the size of the town or city in which the bank is located; according to the economic development of the section of country; or, finally, according to the class of business in which any particular bank wishes to engage. Some indication of the joint result of these factors may be obtained by classifying according to capital the state and national banks with a capital of $25,000 and over.

It will be noted from the table on page 230 that the total number of state banks with a capital of $25,000 and less than $50,000 is much greater than that of the national banks of similar capital. In the New England, Eastern, and Western States, however, the number of national banks of this class is greater than the number of state banks. The smaller number of state banks with a capital of $25,000 and less than $50,000 in the New England and Eastern States is partly explained by the fact that in several of the States in these groups state banks are not incorporated, and in others the minimum capital required for state banks is, or until recently was, $50,000.[a] In New York, where state banks are incorporated under a general law with a minimum capital of $25,000, the number of state banks with a capital of $25,000 and less than $50,000 is nearly equal to that of national banks of the same capital.

[a] See above, p. 38.

Number of national and state banks in 1909 of $25,000 capital and over, classified by capital. [a]

States.	$25,000 and less than $50,000.		$50,000 and less than $100,000.		$100,000 and over.	
	National banks.	State banks.	National banks	State banks.	National banks.	State banks.
Maine	3	....	39	5	35	....
New Hampshire	8	3	17	....	33	1
Vermont	6	....	12	....	32	....
Massachusetts	2	....	23	....	172	....
Rhode Island	....	....	....	1	22	2
Connecticut	4	....	6	....	70	7
Total New England States	23	3	97	6	364	10
New York	83	74	122	36	233	90
New Jersey	49	3	59	12	76	5
Pennsylvania	186	3	282	69	333	57
Delaware	8	6	14	3	6	6
Maryland	30	20	38	11	37	15
District of Columbia	....	....	....	....	11	....
Total Eastern States	356	106	515	131	696	173
Virginia	40	47	37	35	41	44
West Virginia	26	83	40	41	30	35
North Carolina	19	42	19	18	34	12
South Carolina	6	53	7	60	20	31
Georgia	24	155	40	87	38	46
Florida	9	24	13	19	17	7
Alabama	23	58	21	53	32	27
Mississippi	5	99	9	46	17	37
Louisiana	7	55	11	26	17	30
Texas	183	83	197	24	143	4
Arkansas	12	75	17	45	15	25
Kentucky	44	84	44	29	60	25
Tennessee	22	88	37	42	30	28
Total Southern States	420	946	492	525	494	351

[a] The classification is for national banks as reporting on September 1. 1909, and is taken from the Report of the Comptroller of the Currency, 1909, page 111 The classification is for state banks at the nearest date to January 1, 1909 for which reports are accessible. For exact dates, see page 249 and Table IV, Appendix A.

Number of national and state banks in 1909 of $25,000 capital and over, classified by capital—Continued.

States.	$25,000 and less than $50,000.		$50,000 and less than $100,000.		$100,000 and over.	
	National banks.	State banks	National banks.	State banks	National banks	State banks
Ohio	101	143	99	84	175	42
Indiana	88	182	60	53	108	25
Illinois	125	232	158	110	136	77
Michigan	12	129	34	76	53	52
Wisconsin	32	138	45	61	52	19
Minnesota	174	122	60	32	35	11
Iowa	115	166	134	79	71	16
Missouri	41	168	34	91	54	46
Total Middle Western States	688	1,280	625	586	684	288
North Dakota	106	39	27	7	7	....
South Dakota	62	41	25	9	8	3
Nebraska	98	137	88	40	33	2
Kansas	83	99	86	49	40	7
Montana	15	18	11	15	21	11
Wyoming	10	9	13	2	6	1
Colorado	45	20	39	9	31	1
New Mexico	22	15	14	2	6	3
Oklahoma	142	58	57	14	26	5
Total Western States	583	436	360	147	178	33
Washington	29	95	21	25	24	38
Oregon	22	36	35	16	15	18
California	48	123	31	78	80	118
Idaho	16	38	23	12	6	11
Utah	6	22	6	11	8	11
Nevada	3	6	4	4	5	7
Arizona	3	11	5	8	5	3
Total Pacific States	127	331	125	154	143	206
Total United States	2,197	3,102	2,214	1,549	2,559	1,061

While the number of national banks of this class exceeds the number of state banks in the Western group as a whole, there are striking differences among the States in the group. In North Dakota, South Dakota, Colorado, Wyoming, New Mexico, and Oklahoma the national banks are preferred; but in Kansas, Nebraska, and Montana the state banks are more numerous.

In all of the Southern States except Virginia and Texas the state banks of this class greatly outnumber the national banks. In Virginia the difference is not great, and in Texas the larger number of national banks is without doubt partly due to the fact that until 1905 no state banks were incorporated. In Minnesota alone of the Middle Western States are the national banks of this class more numerous. In all of the Pacific States the state banks are more numerous.

The preference shown in most of the States by banks with a capital of $25,000 and less than $50,000 for incorporation under the state banking laws appears to be largely due to the desire to make loans on the security of real estate. Such banks are with few exceptions located in small towns, and a considerable part of their business is with farmers and owners of agricultural land. The national banks outnumber the state banks in this class chiefly in those States where manufacturing and commercial industries are preponderantly important and in certain of the newly developed States. In the former class of States the demand for real estate loans is largely supplied from other sources; and in the latter the banks are not so desirous of making loans on real estate, because of its uncertain

value. Moreover, in the more recently developed States, as has been noted above, a factor which makes for incorporation under the national-bank act is the desire on the part of the promoters of many banks to secure the investment of outside capital in the shares of the bank. It appears likely that as such States as North Dakota, Oklahoma, and South Dakota become less dependent on external credit for the development of their resources, and as the value of their farming lands becomes more stable the number of state banks with a capital of $25,000 and less than $50,000 will increase, and the number of national banks of similar capital will decrease.

State banks with a capital of $50,000 and less than $100,000 are less numerous than the national banks of similar capital, and the state banks with a capital of $100,000 and over are only two-fifths as numerous as the national banks of similar capital. The disparity in numbers grows greater as the capital increases. Only 203 of the state banks in operation in 1909 had a capital as large as $200,000, while 652 of the national banks had a capital of $250,000 and over. The only States in which the number of state banks with a capital of $100,000 and over is greater than the number of national banks of similar capital are Virginia, West Virginia, South Carolina, Georgia, Mississippi, Louisiana, Arkansas, Washington, Oregon, California, Idaho, Utah, and Nevada. It will be noted that all of these States are in the Southern and Pacific groups. In the Pacific group the total number of state banks with a capital of $100,000 and over, exceeds that of the national banks of similar capital. In the

Southern group, if Texas is omitted, the state banks with a capital of $100,000 and over are equal in number to the national banks of the same capital. A partial explanation of the greater relative number of large state banks in the Southern and Pacific States is that in nearly all of the States in these groups trust companies are not separated from the state banks in the official reports.[a]

That the desirability of organization under the national-bank act increases with the increase in the amount of the capital of the bank is due to the increase in importance with the size of the bank of certain advantages of the national over the state banking systems and to the decrease in importance of certain advantages which the state systems have over the national banking system. The advantage of the wider credit which may be secured by incorporation under the national-bank act undoubtedly increases with the size of the bank. Also, as has been pointed out above, the banks in the large places, for the most part, do not desire to loan largely on real estate. On the other hand, the advantage of the lower reserve required for state banks is important to those banks which wish to develop a savings-bank business.

TRUST COMPANIES.

In any consideration of the causes responsible for the great growth of trust companies during recent years it must be borne in mind that a very large number of the so-called "trust companies" are either entirely without trust powers or have not cared to use these powers. In

[a] See p. 248.

Massachusetts no state banks have been chartered for many years, and a very large part of the trust companies do only a banking business. Of the 48 trust companies engaged in business in that State on November 16, 1909, only 26 had trust departments. Similarly, in Maine and Vermont no state banks have been incorporated in recent years, and many of the trust companies are in all except name state banks. Even in several of those States in which both state banks and trust companies may be incorporated the preference for organization under the trust-company law is not due to the desire to carry on a trust business, but to the greater liberality of the trust-company law in its regulation of the banking business. In New York, for example, where the increase of the trust companies in resources, as shown by the following table taken from the report of the New York commission on banks, has been much larger than that of either the national or state banks, there is no doubt that the more liberal reserve requirement has been a factor of considerable importance in the growth of the trust companies:

NEW YORK STATE.

	Resources.			Increase.
	1897.	1902.	1907.	
				Per cent.
Trust companies	396.7	1,078.0	1,364.0	244.1
State banks	297.0	363.0	541.0	82.1
National banks	915.2	1,550.3	1,800.0	96.7

The advantage to the trust companies in New York City of the lower reserve requirement was thus stated

by the New York special commission on banks in their report:

> Another and more forceful way to express the advantage which trust companies enjoy, from a money-making standpoint, is to state the percentage of their total resources which, under existing laws and practices, is earning interest, as compared with the resources of state and national banks; 70.9 per cent of the total resources of state banks are loaned or invested in securities or real estate—in other words, earning interest. The percentage of the total resources of the national banks earning interest is 70.3, whereas 92.2 per cent of the total resources of the trust companies is earning interest.

Not only is the reserve requirement more favorable to trust companies in several of the States in which these companies have experienced their greatest growth, but in certain other respects the regulations relating to trust companies are more liberal than the regulations relating to banks. For instance, in a number of States where banks may not loan on the security of or invest in the stock of other corporations, trust companies are permitted to do so.[a] The great increase in the number of trust companies has occured in a comparatively few States, notably in the New England States, New York, Pennsylvania, and Indiana. In all of these States there are significant differences in the regulations to which trust companies and banks are subjected. These differences, as has been noted in many places in the preceding chapters, have tended to grow less, with the development of the banking powers of the trust company.

Without question, however, there has been in recent years a considerable increase in the number of trust com-

[a] See above, pp. 139–142.

panies whose chief reason for preferring incorporation under the trust company rather than under the state or national banking laws has been the desire to combine with their banking business a trust business. There is undoubtedly a great advantage in the larger cities in such a combination. The two leading authorities on the subject of trust companies—Mr. George Cator and Mr. Clay Herrick—are in agreement in assigning the advantage of such a combination as a chief cause for the growth of such companies.[a] After enumerating minor causes for the growth of trust companies, Mr. Herrick [b] says:

> A third cause [of the growth of trust companies], and in the writer's opinion by far the most important one in most communities, lies in the wide range of powers which the trust company may exercise. In most States it may do all of the things that an ordinary bank may do, except issue notes; and it performs numerous duties that other banks may not undertake. These wide powers attract customers It is a distinct convenience to most people to have all of their financial business attended to under one roof. The trust company will not only care for their banking business, but will also receive their valuables for safe-keeping, care for their property, manage their estates temporarily or permanently, make investments for them, give financial and legal advice, aid in the preparation of wills and execute the same after the decease of the customer.

With the steadily increasing assimilation of the regulation of the banking business of the trust company to that of the state bank, the future growth of trust companies will depend, primarily, upon the advantages which may be obtained by such a combination of banking and trust business, and that in its turn will depend upon the development of the trust business. Outside of the larger cities the

[a] George Cator, "Trust Companies in the United States," p. 66.
[b] Clay Herrick, "Trust Companies," p. 32.

amount of such business is at present very small, but it appears to be increasing. There is a growing disposition to prefer a corporation to an individual in fiduciary relations; and, as the amount of such business increases, the desirability of combining the two branches of business in a single institution will appeal to a larger number of banking institutions.

The trust companies in nearly all the States have most of the characteristics of the state banks. They may loan on real estate, and their reserve requirements are lower than for national banks. They are in essence not a distinct class of banking institutions, but only state banks with additional powers. The full growth of state banking can only be gauged, therefore, by combining the number of state banks and trust companies. Since, however, two-thirds of the trust companies in the United States have a capital of $100,000 or over, the addition of the trust companies to the state banks will not affect appreciably the figures given above except for the class of state banks which have a capital of $100,000 or over. The table on the next page shows the combined number of state banks and trust companies with a capital of $100,000 and over and the number of national banks of similar capital in operation in 1909.

State Banks and Trust Companies

	State banks and trust companies with a capital of $100,000 and over.	National banks with a capital of $100,000 and over.
Maine	14	35
New Hampshire	1	33
Vermont	3	32
Massachusetts	48	172
Rhode Island	16	22
Connecticut	25	70
Total New England States	107	364
New York	175	233
New Jersey	83	76
Pennsylvania	338	333
Delaware	6	6
Maryland	15	37
District of Columbia	5	11
Total Eastern States	622	696
Virginia	44	41
West Virginia	35	30
North Carolina	12	34
South Carolina	31	20
Georgia	46	38
Florida	7	17
Alabama	27	32
Mississippi	37	17
Louisiana	30	17
Texas	26	143
Arkansas	25	15
Kentucky	47	60
Tennessee	28	30
Total Southern States	395	494
Ohio	92	175
Indiana	56	108
Illinois	115	136
Michigan	57	53
Wisconsin	19	52
Minnesota	16	35
Iowa	21	71
Missouri	65	54
Total Middle Western States	441	684
North Dakota	....	7
South Dakota	3	8
Nebraska	2	33

	State banks and trust companies with a capital of $100,000 and over.	National banks with a capital of $100,000 and over.
Kansas	9	40
Montana	11	21
Wyoming	1	6
Colorado	6	31
New Mexico	3	6
Oklahoma	5	26
Total Western States	40	178
Washington	41	24
Oregon	18	15
California	118	80
Idaho	11	6
Utah	11	8
Nevada	7	5
Arizona	3	5
Total Pacific States	209	143
Total United States	1,781	2,559

It will be noted that the total number of state banks and trust companies with a capital of $100,000 and over taken together is considerably less than the number of national banks with the same capital. In only one group, the Pacific, do the state banks and trust companies in this class outnumber the national banks. The superiority in numbers of the national banks over the state banks and trust companies combined is greatest in the New England States and the Western States; in these groups the number of state banks and trust companies with a capital of $100,000 and over is approximately one-third and one-fourth, respectively, of the number of national banks of the same capital. In the Middle Western group the number of state banks and trust companies with a capital of $100,000 and over is about two-thirds of that of the national banks, and in the Eastern and Southern groups the disparity in number is not great.

APPENDIXES.

Appendix A.

STATISTICAL TABLES.

NUMBER OF STATE BANKS.

Table I, showing the number of state banks by years and States, is based on four sources of information:

I. Reports of the Comptroller of the Currency.

II. Reports by state banking officials.

III. Unofficial statements.

IV. Special report from the banks of the United States to the National Monetary Commission, April 28, 1909.

I. REPORTS OF THE COMPTROLLER OF THE CURRENCY.

The first official attempt to collect statistics of banking for the whole country was made in 1833 under a resolution passed by the House of Representatives on July 10, 1832. From that time until 1863, with the exception of some few years, the Secretary of the Treasury regularly included in his reports information regarding the number of state banks in the United States. In his annual report for 1863 Secretary Chase recommended the discontinuance of the practice, and no further information with regard to state banks was given in the succeeding reports of the Treasury Department. By act of Congress in 1873 [a] the Comptroller of the Currency was required to report to Congress "a statement exhibiting under appropriate heads the resources and liabilities of the banks, banking companies, and savings banks organized under the laws of the several States and Territories, such information to be obtained from the reports made by such banks, banking companies, and

[a] Rev Stat., sec. 333.

savings banks to the legislatures or officers of the different States and Territories, and where such reports can not be obtained the deficiency to be supplied from such other sources as may be available."

Until 1887 the Comptroller included in the statistics of state banks only those banks which made returns to some state official.[a] These statistics were reported to the Comptroller by the authorities in the various States. From 1887 to the present time information has been gathered also directly from the banks located in States whose laws do not require reports. The completeness of these returns has depended entirely on the disposition of the banks to give the information asked for. As a matter of fact, only a few banks have made the reports. The statistics contained in the Comptroller's reports, in so far as they are based on unofficial data, are therefore quite incomplete.

From 1875 to 1882 the reports of the banks to the Commissioner of Internal Revenue, given as a tax return, were tabulated by the Comptroller and included in his reports. It was only in the summaries for 1880, 1881, and 1882 that the numbers of private, state, and savings banks were shown by States. From the repeal in 1883 of the law imposing an internal-revenue tax on banks until 1909 no complete official enumeration by classes of banks other than national was made.[b]

[a] There was a sporadic attempt in 1876 to gather information as to banks in other States, but it was abandoned in 1877.

[b] The internal-revenue law of 1898 again imposed a tax on banks and afforded an opportunity for the compilation of a similar table, and this has ostensibly been done (Report of Comptroller of Currency, 1900, Vol. I, pp. 297-300), but in reality private and state banks are inextricably confused.

II. REPORTS BY STATE OFFICIALS.

The reports of the state-bank supervisors are the primary source of information with regard to state banks. They are compiled from returns made by the banks under law, and consequently are entirely accurate. The statistics contained in the Comptroller's reports are valuable only in so far as they are based on the state reports.

In the compilation of the accompanying tables the state reports have been used to correct and supplement the figures given by the Comptroller of the Currency in the following ways:

1. In some cases where official statistics as to the number of state banks were obtainable they have not been used by the Comptroller. For example, since 1891 state banks in West Virginia have been required to make reports to the state auditor. The number of state banks in West Virginia for certain years are thus given by the reports of the Comptroller and of the state auditor:

	Comptroller's report.	Auditor's report.
1891	19	42
1892	27	45
1893	45	55
1894	26	56
1895	58	58
1896	59	60
1897	66	68
1898	41	74
1899	75	75

Evidently for several of these years the Comptroller, for some reason, has not availed himself of the information collected by the state authorities, but used incom-

plete voluntary returns. Wherever, as in this case, a discrepancy has been found between the numbers given in official state reports and those in the Comptroller's reports the former have been used.

2. In several States the returns of private and state banks as given by the Comptroller are not separated. It has been found possible in most cases by resorting to the state reports to remedy this defect. In some States, however, a few private banks are included in the number of state banks as given in the table.

3. The Comptroller's office has pursued a varying policy with regard to the classification of stock savings banks in Iowa and Michigan. Until 1876 all banks in Michigan operating under state charters were classed as state banks, but in that year they were divided into state and savings banks. Again in 1877 they were all reported as state banks, but in 1888 the division was again made and retained until 1893. Since that time the early method of classing them together as state banks has been followed. The banks of Michigan are nearly all banks of discount and deposit, many of which carry on in addition a savings bank business. Whatever classification is made of them should be a uniform one, and it has seemed most in accordance with the facts to consider them all as state banks. Consequently the numbers for 1876, 1888, 1889, 1890, 1891, 1892, given in the Comptroller's reports, have not been used in the tables, but the numbers given by the bank commissioner of Michigan for all state banks have been substituted for them. A similar situation presented itself in the case of the Iowa banks. Since 1875 savings

and state banks have been classed separately by the state officials. Until 1886 they were grouped together as state banks by the Comptroller, but after that time they were separated. The numbers given for the earlier years by the Comptroller have been replaced in the table by those of the state auditor.[a]

III. UNOFFICIAL STATEMENTS.

Even after the statistics given by the Comptroller have been supplemented and corrected as far as possible by the official state reports, there still remain a considerable number of States for the banks of which official information is lacking either for all or a part of the period 1877–1899. As has been said before, the Comptroller since 1887 has collected statistics for such States by direct communication with the banks, but he has secured returns from such a small part of the banks that the information given is of no value in determining the number of banks.

In order to fill in these gaps unofficial data have been used. Since 1873 "Homans' Bankers' Almanac and Register" and its continuations has given annually the number of state banks in each State. There are reasons for believing that the numbers given in "Homans'" are approximately correct. They closely correspond for the years 1880, 1881, 1882 with the numbers contained in the official enumerations made by the Commissioner of Internal Revenue. The substantial accuracy of the

[a] Since the auditor's reports up to 1887 were biennial, returns are only obtainable for alternate years; the intervening years have been filled by taking an average of the preceding and succeeding numbers. This method of interpolation has been used in several other places in the table.

"Homans'" statistics is also indicated by the fact that whenever a State has adopted a system of bank supervision the exact returns thus obtained indicate that the "Homans'" numbers for previous years were very nearly correct.

IV. SPECIAL REPORT FROM THE BANKS OF THE UNITED STATES TO THE NATIONAL MONETARY COMMISSION, APRIL 28, 1909.

The National Monetary Commission, with the cooperation of the state bank supervisors, has recently obtained reports from as many as possible of the banking institutions of the United States. These reports showed the condition of the banks at the close of business on April 28, 1909. Practically all of the state banks are included. The numbers in Table I for 1909 are taken entirely from this report.

NUMBER OF TRUST COMPANIES.

Table II, showing the number of trust companies by years and States, is constructed from the same sources as Table I. Prior to 1900, however, no unofficial reports of the number of trust companies as distinguished from state banks are available. Since 1900 the number of trust companies for those States in which either there are no official reports or in which the official reports do not distinguish state banks and trust companies have been inserted from the unofficial reports. From 1900 to 1905, inclusive, "Homans' Bankers' Almanac" and its continuations was used for this purpose, and from 1905 to 1908, inclusive, "Trust Companies of the United States." The large increase in the number of trust companies from 276

	b 18 6	20	24
	848 1	937	976
	86 5	123	131
	86 1	99	96
	b 117	b 138	b 141
	159	178	179
	118	126	130
	133	154	145
	177	201	206
	455	484	500
	1,331	1,503	1,528
	72	72	73
	b 82	80	c 87
	a 386	b 325	b 311
	276	b 284	b 275
3	a 14	7	7
1	5	5	5
:	29	31	32
5	a 7	a 8	6
	a 9	29	49
0	880	841	845
8	64	c 36	32
1	a 30	a 32	a 30
1	173	174	173
9	a 10	a 11	a 11
1	5	a 13	8
8	a 5	a 5	a 7
9	a 9	7	7
7	296	278	268
4	3.700	3.917	3.978

in 1899 to 492 in 1900 shown in the table is due to the inclusion in 1900 of data from unofficial sources.

It is to be noted that from 1900 to 1908 there is some duplication in the figures given in Tables I and II. A considerable number of official state reports include as state banks all trust companies which engage in banking. The number of trust companies in these States as obtained from unofficial sources has been inserted in Table II, although the same companies are already included wholly or partly as state banks in Table I. Moreover, since 1906 the unofficial reports of the number of state banks used in Table I to supplement the official data include trust companies, and since the unofficial reports of the number of trust companies are from a different source it has not seemed wise to attempt any separation. The extent of the duplication can, however, be defined. The number of trust companies as given by the official state reports and the number as given in Table II are shown here in parallel columns from 1900 to 1908, inclusive.

	Trust companies in those States for which official reports as to the number of trust companies are accessible.	Trust companies in the United States according to official and unofficial reports.
1900	310	492
1901	356	561
1902	439	636
1903	530	827
1904	593	924
1905	673	1,041
1906	759	1,337
1907	807	1,485
1908	862	1,496

It is to be noted that the number of trust companies as given by the reports to the National Monetary Commission on April 28, 1909—1,079—was more than the number in those States for which official state reports are accessible, but much less than the number given by the combination of official and unofficial reports.

NUMBER OF PRIVATE BANKS.

Table III, showing the number of private banks by years from 1877 to 1909, has been compiled entirely from "Homans' Bankers' Almanac" and its continuations. The number of private banks is officially reported in only a few States.

CLASSIFICATION OF STATE BANKS, TRUST COMPANIES, AND PRIVATE BANKS ACCORDING TO CAPITAL.

Tables IV, V, and VI show the number of state banks, trust companies, and private banks classified according to capital. The capital of the state banks classified in Table IV has been ascertained wherever possible from the state bank reports. In those States where the banks do not make official reports or such reports are not published, the capital has been taken from "Homans' Bankers' Almanac" for January 1, 1909. The date of the official reports from which the capitals were taken is given in the table after each State. The dates for which capital was ascertained were not in all cases simultaneous with the dates for which the number of state banks is given in Table I. There are, therefore, slight discrepancies in the total number of banks as given in Tables I and III.

128	131	153	147	105
33	29	7	8	6
42	37	22	21	25
15	18	11	12	14
22	19	11	12	13
464	450	368	362	399
253	245	262	260	268
182	180	204	209	213
541	540	567	560	562
219	218	236	235	241
100	108	106	104	111
177	175	204	205	214
460	464	477	477	490
131	130	114	107	107
2,063	2,060	2,170	2,157	2,206
14	14	0	0	1
58	48	48	47	52
143	132	81	79	74
171	148	113	118	96
14	16	18	17	17
8	9	8	9	12
44	50	52	55	48
4	4	5	5	5
23	19	21	20	4
479	440	346	350	309
9	17	15	17	19
20	17	13	15	16
32	35	28	30	31
10	15	11	11	13
10	12	13	13	13
7	6	3	3	3
5	3	....	....	1
93	105	83	89	96
3,844	3,924	3,810	3,806	3,853

Table V, which shows the number of trust companies classified by capital has been compiled entirely from the official state reports. The total number of trust companies so classified is 988. Probably from 200 to 300 trust companies are included among the state banks classified in Table IV.

Table VI, which shows the number of private banks classified according to capital, is compiled entirely from official reports. Only a small part of the total number of private banks are included, since official reports are made by private banks in only about one-third of the States and Territories.

TABLE IV.—*Number of state banks, classified by capital, 1909.*

	$5,000 or less.	Over $5,000 and less than $10,000.	$10,000 and less than $15,000.	$15,000 and less than $20,000.	$20,000 and less than $25,000.	$25,000 and less than $50,000.	$50,000 and less than $100,000.	$100,000 and less than $200,000.	$200,000 and over.	Total.
Maine										
New Hampshire (June 30, 1909)						3	5	1		9
Vermont										
Massachusetts										
Rhode Island (June 30, 1909)							1	1	1	3
Connecticut (Sept. 1, 1909)								2	5	7
Total New England States						3	6	4	6	19
New York (Sept. 14, 1909)			1			74	36	40	50	201
New Jersey (Nov. 16, 1909)						3	12	3	2	20
Pennsylvania (Nov. 27, 1908)	1					3	69	39	18	130
Delaware					1	6	3	1	5	16
Maryland	2	3	18	3	7	20	11	9	6	79
District of Columbia										
Total Eastern States	3	3	19	3	8	106	131	92	81	446
Virginia (Nov. 28, 1909)	6	21	46	24	16	47	35	21	23	239
West Virginia (Nov. 16, 1909)			2	4	5	83	41	27	8	170
North Carolina (Nov. 16, 1909)	50	34	77	34	19	42	18	7	5	286
South Carolina (Nov. 16, 1909)	9	9	35	27	20	53	60	29	2	244
Georgia (Nov. 16, 1909)		1		162	17	155	87	32	14	468
Florida (Nov. 16, 1909)		1	1	39	6	24	19	5	2	97
Alabama (Oct. 18, 1909)			22	38	10	58	53	19	8	208

Mississippi (Nov. 16, 1909)	3	3	65	30	33	99	46	31	6	316
Louisiana (Dec. 3, 1909)		1	37	26	12	55	26	15	15	187
Texas (Nov. 27, 1908)			125	34	22	83	24	4		292
Arkansas	37	30	76	31	18	75	45	16	9	337
Kentucky (Oct. 2, 1909)		10	8	223	48	84	29	21	4	427
Tennessee	14	39	78	25	23	88	42	18	10	337
Total Southern States	119	149	572	697	249	946	525	245	106	3,608
Ohio (Nov. 16, 1909)			76	45	14	143	84	33	9	404
Indiana (Sept. 30, 1909)			3		1	182	53	24	1	264
Illinois (Sept 2, 1909)						232	110	44	33	419
Michigan (Sept. 1, 1909)				16	98	129	76	37	15	371
Wisconsin (Nov 16, 1909)	11	7	139	72	23	138	61	13	6	470
Minnesota (July 15, 1908)			300	100	42	122	32	8	3	607
Iowa (May 14, 1908)						166	79	16		261
Missouri (Sept. 23, 1908)	7	4	415	93	130	168	91	36	10	954
Total Middle Western States	18	11	933	326	308	1,280	586	211	77	3,750
North Dakota (Apr. 29, 1909)	14	8	308	46	24	39	7			446
South Dakota (June 2, 1908)	117	23	148	35	10	41	9	3		386
Nebraska (Nov. 16, 1909)	62	30	218	110	60	137	40	1	1	659
Kansas (Sept. 1, 1908)			358	78	57	99	49	5	2	648
Montana (Nov. 16, 1909)					8	18	15	7	4	52
Wyoming			25	4	5	9	2	1		46
Colorado (Nov. 27, 1908)	4	3	29	10	1	20	9	1		77
New Mexico				17		15	2	3		37
Oklahoma (Sept. 23, 1908)	76	7	295	49	16	58	14	3	2	520
Total Western States	273	71	1,381	349	181	436	147	24	9	2,871

TABLE IV.—*Number of state banks, classified by capital, 1909*—Continued.

	$5,000 or less.	Over $5,000 and less than $10,000.	$10,000 and less than $15,000.	$15,000 and less than $20,000.	$20,000 and less than $25,000.	$25,000 and less than $50,000.	$50,000 and less than $100,000.	$100,000 and less than $200,000.	$200,000 and over.	Total.
Washington (Nov. 16, 1909)		1	37	21	2	95	25	22	16	219
Oregon (Nov. 16, 1909)	1	3	25	10	11	36	16	11	7	120
California (July 15, 1908)					2	123	78	59	59	321
Idaho		2	46	8	12	38	12	8	3	129
Utah (Sept. 25, 1908)			7	4	1	22	11	5	6	56
Nevada (Nov 16, 1909)			5	2		6	4	4	3	24
Arizona			4		1	11	8	3		27
Total Pacific States	1	6	124	45	29	331	154	112	94	896
Total United States	414	240	3,029	1,420	775	3,102	1,549	688	373	11,590

TABLE V.—*Classification by capital of the number of trust companies in those States in which trust companies make official reports and in which they are distinguished from state banks, 1909.*

	$5,000 or less.	Over $5,000 and less than $10,000.	$10,000 and less than $15,000.	$15,000 and less than $20,000.	$20,000 and less than $25,000.	$25,000 and less than $50,000.	$50,000 and less than $100,000.	$100,000 and less than $200,000.	$200,000 and over.	Total.
Maine (1909)	......	......	......	......	......	7	19	11	3	40
New Hampshire	......	......	......	......	......	......	......	......	......	......
Vermont (June 30, 1909)	......	......	......	......	......	8	18	3	......	29
Massachusetts (Nov. 16, 1909)	......	......	......	......	......	......	......	14	34	48
Rhode Island (June 30, 1909)	1	......	......	......	1	......	1	3	11	17
Connecticut (Sept. 1, 1909)	......	......	......	......	......	4	5	9	9	27
Total New England States	1	......	......	......	1	19	43	40	57	161
New York (Jan. 1, 1910)	......	......	......	......	......	......	......	15	70	85
New Jersey (Dec. 31, 1909)	......	......	......	......	......	......	2	58	20	80
Pennsylvania (Nov. 27, 1908)	......	......	1	......	......	......	1	150	131	283
Delaware	......	......	......	......	......	......	......	......	......	......
Maryland	......	......	......	......	......	......	......	......	......	......
District of Columbia (Sept. 1, 1909)	......	......	......	......	......	......	......	......	5	5
Total Eastern States	......	......	1	......	......	......	3	223	226	453
Virginia	......	......	......	......	......	......	......	......	......	......
West Virginia	......	......	......	......	......	......	......	......	......	......
North Carolina	......	......	......	......	......	......	......	......	......	......
South Carolina	......	......	......	......	......	......	......	......	......	......
Georgia	......	......	......	......	......	......	......	......	......	......

TABLE V.—*Classification by capital of the number of trust companies in those States in which trust companies make official reports and in which they are distinguished from state banks, 1909*—Continued.

	$5,000 or less.	Over $5,000 and less than $10,000.	$10,000 and less than $15,000.	$15,000 ond less than $20,000.	$20,000 and less than $25,000.	$25,000 and less than $50,000.	$50,000 and less than $100,000.	$100,000 and less than $200,000.	$200,000 and over.	Total.
Florida										
Alabama										
Mississippi										
Louisiana										
Texas (Nov. 27, 1908)							22	17	5	44
Arkansas										
Kentucky (Oct. 2, 1908)						1	18	11	11	41
Tennessee										
Total Southern States						1	40	28	16	85
Ohio (Nov. 16, 1909)						8	13	14	36	71
Indiana (Sept. 30, 1909)						30	38	17	14	99
Illinois (Sept. 2, 1909)							2	12	26	40
Michigan (Sept. 1, 1909)								1	4	5
Wisconsin										
Minnesota (July 31, 1908)									5	5
Iowa (May 14, 1908)						1	7	3	2	13
Missouri (Sept. 23, 1908)							19	10	9	38
Total Middle Western States						39	79	57	96	271

North Dakota										
South Dakota (June 2, 1908)							1			1
Nebraska										
Kansas (Sept. 1, 1908)								2		2
Montana										
Wyoming										
Colorado (Nov. 27, 1908)							6		5	11
New Mexico										
Oklahoma										
Total Western States							7	2	5	14
Washington (Nov. 16, 1909)							1	1	2	4
Oregon										
California										
Idaho										
Utah										
Nevada										
Arizona										
Total Pacific States							1	1	2	4
Total United States	1		1		1	59	173	351	402	988

TABLE VI.—*Classification by capital of the number of private banks in those States in which private banks make official reports, 1909.*

	$5,000 or less.	Over $5,000 and less than $10,000.	$10,000 and less than $15,000.	$15,000 and less than $20,000.	$20,000 and less than $25,000.	$25,000 and less than $50,000.	$50,000 and less than $100,000.	$100,000 and less than $200,000.	$200,000 and over.	Total.
Maine										
New Hampshire										
Vermont										
Massachusetts										
Rhode Island										
Connecticut										
Total New England States										
New York										
New Jersey										
Pennsylvania										
Delaware										
Maryland										
District of Columbia										
Total Eastern States										
Virginia										
West Virginia										
North Carolina (Nov. 16, 1909)						1				1
South Carolina										
Georgia										
Florida (Dec. 31, 1908)	1	1	1		1					4

State Banks and Trust Companies

Alabama										
Mississippi										
Louisiana										
Texas										
Arkansas										
Kentucky										
Tennessee										
Total Southern States	1	1	1		1	1				5
Ohio										
Indiana (Sept. 30, 1909)			133	21	12	21	8	5		200
Illinois										
Michigan										
Wisconsin										
Minnesota (July 15, 1908)			2	1	1	1				5
Iowa										
Missouri (Sept. 23, 1908)	19	3	19	1	6	4			1	53
Total Middle Western States	19	3	154	23	19	26	8	5	1	258
North Dakota										
South Dakota (June 2, 1909)	10	1	13							24
Nebraska (Nov. 16, 1908)	2						1			3
Kansas (Sept. 1, 1908)			3	3	1					7
Montana										
Wyoming										
Colorado (Nov. 27, 1908)			32	6	5	4	4			51
New Mexico										
Oklahoma										
Total Western States	12	1	48	9	6	4	5			85

TABLE VI.—*Classification by capital of the number of private banks in those States in which private banks make official reports, 1909*—Continued.

	$5,000 or less.	Over $5,000 and less than $10,000.	$10,000 and less than $15,000.	$15,000 and less than $20,000.	$20,000 and less than $25,000.	$25,000 and less than $50,000.	$50,000 and less than $100,000.	$100,000 and less than $200,000.	$200,000 and over.	Total.
Washington										
Oregon (Nov. 16, 1909)			7	1		3	3		1	15
California (July 15, 1908)					1	8	4		2	15
Idaho										
Utah (Sept. 25, 1908)			1		1				1	3
Nevada										
Arizona										
Total Pacific States			8	1	2	11	7		4	33
Total United States	32	5	211	33	28	42	20	5	5	381

APPENDIX B.

THE INSURANCE OF BANK DEPOSITS IN THE WEST.

By THORNTON COOKE.

I.[a]

OKLAHOMA.

Within the last two years, laws providing for the guaranty or insurance of bank deposits, through funds administered by the State, have been enacted in Texas, Oklahoma, Kansas, Nebraska, and South Dakota, a great region stretching from the Gulf of Mexico almost to the Canada line.

The first of these laws was adopted in Oklahoma, and there could be no better place for the experiment than this splendid commonwealth. Though not a pioneer country, since much of it was opened to settlement twenty years ago, yet its 70,000 square miles are still in the early stages of their development. Almost every variety of extractive industry and agriculture is here represented—coal mining, oil production, the raising of wheat, alfalfa, corn, and cotton, and the breeding and fattening of cattle. The population of the new State, much more than 1,000,000 in number, is intensely American. Its people are ready, when they find no precedent, to make one, as witness their remarkable state constitution.

[a] The Quarterly Journal of Economics, November, 1909.

The progress to the present time of their experiment of guaranteeing deposits, begun more than a year ago, is here presented. The information is derived from personal observations, official sources, and conversation and correspondence with many Oklahoma bankers. One event of absorbing interest, the closing of the largest state bank in Oklahoma, has just occurred. Authoritative information about the bank and the administration of the state guaranty fund since its closing can not now be had,[a] and the significance of this episode must be presented in a later paper, together with a study of the legislation adopted in the rest of this region and proposed in other States. In the light of these experiments, the subject can then be generally considered and a conclusion reached as to how far insurance of bank deposits is practicable and desirable.

When the bankers of Oklahoma reached their offices Monday morning, October 28, 1907, they found that over Sunday the banks of St. Louis and Kansas City, following the example of New York and Chicago, had suspended cash payments, except in small amounts, and that the governor of Oklahoma, to give the banks time to meet the situation, had declared a legal holiday of a week. The panic was on. The principal correspondents of the banks were in St. Louis and Kansas City. Currency could not be obtained from either city except in driblets. An order for $5,000 in currency might bring $500, if so much. The Oklahoma banks had no place to get currency to pay depositors in the panic evidently sweeping over the country.

[a] October 13, 1909.

The paralysis of trade the country over exceeded anything that had been seen in a generation, and the course of events was the same in Oklahoma as in the other States. Farmers would not sell hogs and grain and cotton because the buyers could not pay in actual money. The movement of commodities stopped; long trains of idle freight cars filled the city yards and cumbered the country sidings. The railroads bought little coal and the output of the mines fell off. Many railroad men, miners, mechanics, and laborers were idle and money to pay others could be scraped together only by the severest of expedients, and at great expense. Values melted away and business was dead.

All this was the common experience of the United States, and there were two legislative results. It seemed to many that additional supplies of currency in October and November would have saved the situation, and the Aldrich-Vreeland Act was passed in the belief that it would provide such supplies in future stringencies. It seemed to others that there would have been little trouble if bank depositors had known that their deposits were secure; and this theory led to the creation of the Oklahoma deposit-guaranty fund.

Immediately after the declaration of the week-long holiday, the executive committee of the Oklahoma Bankers' Association was convened at Guthrie, the capital. A day and night of conferences with the political authorities came to nothing. In a few days, however, the committee was again at Guthrie to devise some plan to enable the Oklahoma banks to resume cash

transactions. It was obviously impossible to pay all the depositors at once, and there was great fear that depositors would stampede if restrictions on cash payments were removed. All over the country, during November and December, bankers were saying that if the depositors only knew that the banks were sound and their deposits well invested and secure, the usual course of business could be resumed any day. To give depositors this assurance, it was suggested at this second Guthrie committee meeting that the state and nation guarantee the bank deposits. It was agreed that the state bankers present should submit the idea to state banks throughout Oklahoma, while national bankers urged congressional action. It was soon learned that nothing was to be hoped from Congress, at least in time to be of help in the crisis of 1907. The national banks, through an able committee, then investigated the feasibility of an organization among themselves to guarantee the deposits in the national banks of Oklahoma, but decided that the scheme was not practicable at the time. The national banks of Kansas are now trying to put such a scheme into operation, as will appear later on in this paper.

A few weeks after the panic began Oklahoma became a State, and the first state legislature met. The state banking board prepared and had introduced a bill to guarantee bank deposits. Governor Haskell was a member of the board.

The bill became a law December 17, 1907, while currency was still at a premium in New York, and before cash payments had been fully resumed by western banks.

		banking board on demand.	
a ...ar-	May parti[illegible] ...	By state treasurer. In case the law shall provide for stated depositaries, shall deposit fund therein, provided that fund may be invested in state warrants.	Banks receive certificate of membership in association. No provision on subject of advertising.
[illegible]	May participating ...ar-	One-fourth deposited with state treasurer. Three-fourths credited to state banking board on books of respective banks.	"The noninterest bearing and unsecured deposits of this bank are protected by the depositors' guaranty fund of the State of Texas," *or* "The deposits of this bank are protected by guaranty bond under the laws of this State." Penalty provided for statement that State of Texas guarantees deposits.

The act levied an assessment on each bank of 1 per cent of its average deposits to create a fund out of which should be paid deposits of banks that might fail, and provided that in case the fund should be depleted a special assessment should be made to cover the deficiency. No limit was set to such special assessments, and each state bank was therefore the absolute guarantor of the deposits of all the other state banks of Oklahoma. New banks were required to pay, as organized, 3 per cent of their capital, this payment being subject to adjustment on the basis of deposits at the end of their first year.

All state banks were by this law compelled, and national banks were permitted, to guarantee their deposits in this way. As will be seen later, the Comptroller of the Currency refused to allow national banks to participate in the scheme.

The chief provisions of the Oklahoma statute are shown in the accompanying table, in comparison with the provisions of the deposit-guaranty laws of other States.

Now, the Territory of Oklahoma had for a number of years enjoyed a good banking law and a competent bank commissioner. Failures had been few. The financial history of Oklahoma is brighter than the early financial history of other States in the same region. With the admission of Oklahoma as a State, however, there were added to the institutions under the supervision of the bank commissioner some 175 banks and trust companies from the old Indian Territory. These had been operating without any public supervision or examination. They were officially an unknown factor in the banking situation.

Partly because of these banks and partly to make it as sure as possible that only good institutions should have their deposits guaranteed, the bank commissioner decided to have every institution in his charge examined within the sixty days before the law would go into effect. Four hundred and sixty-eight banks had reported to the commissioner December 11, 1907. The examination of so many banks in a single State within two months is unique. It was accomplished by employing active bank officers as special examiners of other banks than their own. The fact is remarkable that almost all the banks stood the test. A few were required to liquidate, and many being found, as the commissioner says, "not in harmony with the law at all points," were given further time to comply fully with the law; but, practically speaking, the banks of Oklahoma went into the guaranty system, February 14, 1908, with a clean bill of health.

Expecting the insurance or guaranty of deposits under state supervision to be attractive to depositors, no fewer than 57 national banks applied to have their deposits guaranteed, and were examined by the bank commissioner of Oklahoma as provided by the guaranty law. On July 28, 1908, however, the Attorney-General of the United States, Mr. Bonaparte, advised the Comptroller of the Currency that a national bank could not legally participate in the Oklahoma guaranty. In Mr. Bonaparte's opinion it was beyond the powers of a national bank to insure its deposits against loss, and he believed that under the Oklahoma law the banks were not effecting insurance but giving contracts of guaranty, or suretyship, which national

banks clearly could not do. The Comptroller of the Currency, therefore, forbade the national banks to participate in the guaranty scheme.

Litigation to resolve the legal questions was already under way. Many bankers felt that it was unwise and unfair to require the successful banks to pay the debts of the unsuccessful. As a test case, the Noble State Bank asked for an injunction restraining the state banking board from enforcing the law in its case. The points were made that the bank's charter rights were not subject to change by the legislature and that to exact contributions to a fund for the payment of deposits of failed banks would be to deprive it of its property without due process of law. The supreme court of Oklahoma ruled, however, that the charter was granted under conditions that made the bank's rights thereunder subject to legislative amendment. Banking, it further held, was a quasi public business. The assessments complained of were for the purpose of safeguarding the public in its dealings with the banks, and it was within the police power of the State to levy them, there being, moreover, a consideration in the benefits derived by all banks from the assurance thus afforded customers of the safety of their deposits.[a]

The case was appealed to the Supreme Court of the United States, and has not yet been decided.

The situation by midsummer of 1908 was that national banks had been forbidden to obtain guaranty of their deposits, the constitutionality of the law as to state banks had been seriously attacked, and the state banks were advertising far and near and forcibly, the protection afforded

[a] The opinion in this case may be found in 97 Pacific Reporter, 590.

to their customers by the "Depositors Guaranty Fund of the State of Oklahoma." Some banks went so far as to advertise that their deposits were guaranteed by the State itself. This was not permissible under the law, and was forbidden under penalty by the amendatory act effective June 11, 1909; but some banks continued so to advertise as, perhaps, to give the impression that the State as such protected the depositors. "Deposits protected by the law of Oklahoma," or similar phrases, have been used. In country banks much of the appeal for business is by word of mouth, and state bankers have not failed to point out that deposits in their banks are guaranteed.

The state banks were gaining on the nationals, as is shown by the accompanying tables compiled from official returns.[a]

Between the February and May statements of 1908, the number of state banks had increased 24. The number of banks in Oklahoma Territory had increased only one between June 1, 1907, and December 11, 1907, and the number in Oklahoma State had increased only two between December 11, 1907, and February 29, 1908. The frequent organization of banks after the latter date was because it was supposed that a new bank could obtain a good line of deposits more rapidly under the assurance of safety given to depositors by the new law. Fewer banks were organized during the early summer, but the July statement showed a gain in the individual deposits of state banks since the taking effect of the guaranty law of more than $3,000,000. The national banks had decreased four in number, and their deposits

[a] Pages 269–270.

had declined about two-thirds of the amount the state banks had gained. Both classes of banks had exhibited in the February statements abnormally large reserves, because of the accumulation of cash and sight exchange during the panic. These reserves had declined somewhat by midsummer, but remained ample in both cases. The following table shows the percentage of the cash resources of Oklahoma banks to deposits, (*a*) when the guaranty law went into effect, (*b*) one year later, and (*c*) on June 23, 1909. In working out these percentages, some small miscellaneous items of deposit and of exchange are, for the sake of perfect accuracy, added to the items shown on the table on page 270. The technical legal reserve of national banks is so calculated as to be incomparable with the reserve of state banks, but the following percentages have been calculated on the same basis for both classes of banks:

STATE BANKS.

	Feb. 29, 1908.	Feb. 5, 1909.	June 23, 1909.
Percentage of cash and sight exchange to deposits	51.8	45.9	38.9
Percentage of cash to deposits	11.0	7.8	7.7

NATIONAL BANKS.

	Feb. 14, 1908.	Feb. 5, 1909.	June 23, 1909.
Percentage of cash and sight exchange to deposits	46.8	41.9	39.2
Percentage of cash to deposits	13.2	8.9	9.8

Certain items in Oklahoma bank statements.

STATE BANKS.

	Feb. 29, 1908.	May 14, 1908.	July 15, 1908.	Sept. 23, 1908.	Nov. 27, 1908.	Feb. 5, 1909.	Apr. 28, 1909.	June 23, 1909.
Number of banks	470	494	499	520	546	574	611	631
Capital	$6,233,216	$6,640,650	$6,795,050	$7,456,250	$7,957,350	$8,487,525	$9,587,950	$10,270,800
Surplus	580,892	563,417	585,951	595,774	613,218	742,366	752,892	758,774
Due to banks	476,527	705,727	711,677	1,341,324	1,823,620	2,573,102	3,691,633	3,896,541
Individual deposits	18,032,284	20,387,887	21,216,526	24,971,147	29,448,970	35,160,713	40,991,937	42,722,927
Due from banks	7,529,816	7,919,878	7,206,695	8,593,570	11,186,403	14,366,615	15,600,732	14,390,114
Cash in bank	2,078,687	1,964,392	1,968,944	2,295,700	2,892,485	2,973,453	3,707,246	3,643,366

NATIONAL BANKS.

	Feb. 14, 1908.	May 14 1908.	July 15, 1908.	Sept. 23, 1908.	Nov. 27, 1908.	Feb. 5, 1909.	Apr. 28, 1909.	June 23, 1909.
Number of banks	312	309	308	298	288	270	242	230
Capital	$12,215,350	$12,212,700	$12,242,500	$11,890,000	$11,447,500	$10,987,500	$10,140,000	$9,730,000
Surplus	3,063,039	3,065,444	3,118,143	3,102,543	3,019,723	3,091,922	2,849,009	2,775,489
Due to banks	4,416,212	4,599,145	3,988,660	4,070,891	5,498,125	6,253,297	5,405,316	5,123,122
Individual deposits	38,298,247	38,342,852	36,820,989	36,142,095	36,280,346	39,716,166	38,994,192	38,111,948
United States deposits	1,789,280	1,718,337	1,697,409	1,751,175	1,714,831	1,620,135	1,210,425	1,203,412
Due from banks	14,801,868	13,962,536	11,398,843	10,844,305	11,932,340	15,523,947	14,426,383	12,901,584
Cash in bank	5,878,268	5,118,691	4,473,543	4,426,087	4,573,081	4,246,749	4,362,243	4,378,131

After the July statement, the organization of state banks proceeded rapidly. By June 23 of this year, the number had further increased 132, and had reached 631. Many of the new state banks were conversions of national banks, the number of the latter falling 78 in the same time, a total loss of 82 since the taking effect of the guaranty law. Only four national banks, all with the minimum capital of $25,000 each, were chartered in Oklahoma from February 14, 1908, to September 7, 1909, while 20 had been chartered in the year ending October 31, 1907.

The April statements of 1909 showed that the state banks had overtaken the national banks in individual deposits, and in the June statements the total deposits of the state banks, including the deposits of other banks, were greater than all the deposits in the national banks. In the state banks, individual deposits alone had grown under guaranty from $18,000,000 to nearly $43,000,000; more than double. Of this gain of $25,000,000, about $7,300,000 came from the conversion of 73 national banks. In the national banks, individual deposits had barely held steady. The item "deposits of other banks" showed a gain. Of course the deposits of the national banks averaged larger per bank than before, because there were fewer banks. Capital had measurably kept pace with deposits, and this item, too, had become larger in the statements of state banks than in those of the nationals. The surplus of state banks could not, of course, increase in proportion to the increase in capital; the latter being swelled by the organization of new banks, which would require time to accumulate surpluses.

Without question the growth of $25,000,000 in the deposits of the state banks of Oklahoma since the establishment of a system of deposit guaranty had been due to that guaranty. There have been many attempts to explain the growth of deposits in other ways, but it can not be done. It was suggested that the state school fund of $5,000,000 would account for part of the early growth, but as early as March 1, 1909, the unexpended portion of the fund amounted to only $1,187,950, of which $250,000 was in national banks.[a] There has been a tendency to place other public moneys—state, county, city, and school district accounts—in the state banks. Such accounts are not separated from individual deposits on the statements published by the bank commissioner; but all the idle public funds of the new State can not amount to $25,000,000 or any large fraction of it. The State itself is issuing warrants for expenses, as are some of its municipal divisions.

The rapid growth of Oklahoma accounts for part of the gain, but only the state banks as a whole have gained.

It is true that large sums have been received on deposit from citizens of other States and that $7,000,000 came with converted national banks, but the outside deposits and the wholesale conversions of national banks only demonstrate the strong appeal that deposit insurance makes to actual and potential depositors. A good deal of buried money has been dug up and placed in banks.

Some have asserted that deposits have been attracted by the payment of excessive interest, but the state banks

[a] Letter from Bank Commissioner Young to the writer.

are probably paying lower rates than are the nationals. The commissioner informed the writer last March that of all the national banks converted up to that time, about 40, all but 2 were paying from 5 to 7 per cent on time deposits. State banks are limited to 4 per cent by the commissioner, who has power to fix the maximum. Some state banks would like to pay more to meet the competition of national banks, and in parts of Oklahoma 5 per cent is not too much to pay in view of economic conditions; but the commissioner adheres to his position.

Some state banks paid higher rates at first; one paid 8 per cent for a short time until the bank commissioner heard of it. It is said that some bankers are evading the commissioner's ruling by paying excessive interest out of their own pockets, but the commissioner says that he can not discover that this is done in many cases.[a] The practice can not obtain to any important extent.

The following statistics of bank organizations and conversions under the guaranty law will be more readily appreciated if it is recalled that Oklahoma is a typical part of the great central region of this country in which banks of the smallest legal capitalization abound. On account of the lack of a system of branches, banking facilities are afforded by banks of $10,000 capital, such banks being often established in towns of fewer than 100 people. Formerly the new banks frequently had only $5,000 capital, but with the growth of wealth the States in this region have generally fixed $10,000 as the minimum capital, and most of the new banks have naturally

[a] Reply by Bank Commissioner A. M. Young to Prof. W. C. Webster, Journal of Pol. Econ., July, 1909, p. 463.

not exceeded the minimum. Capital is scarce on the economic frontier.[a]

The following information has been derived from the annual report of the bank commissioner, November 1, 1908, and from a list kindly furnished by him of banks organized since; and by comparing both with the reports of the Comptroller of the Currency for 1907 and 1908. From February 14, 1908, to September 1, 1908, 179 state banks were chartered, including 77 conversions of national banks. Between November 16, 1907, and November 1, 1908, 19 state banks liquidated, 3 changed location, 2 consolidated with other banks, and 2 nationalized. Their capitals are not stated in the commissioner's report for 1908. Few banks have liquidated or nationalized since. The 179 state banks had $3,684,000 capital distributed as follows:

69 had each	$10,000.00
37 had each not over	15,000.00
7 had each not over	20,000.00
40 had each	25,000.00
10 had each not over	35,000.00
12 had each not over	50,000.00
2 had each not over	61,000.00
1 had	100,000.00
1 had	200,000.00

The guaranty of deposits did not create the tendency to small capitalization. Indeed there are rather more new banks with capital over $10,000 than might have been expected. For this there are three reasons. Many of the

[a] For studies, by the writer, of banking in this region, see The Distribution of Small Banks in the West, Q. J. E. xii, 70; The Minimum Capital of a National Bank, North American Review, vol. 167, p. 457; The Effect of the New Currency Law on Banking in the West, Q. J. E. xv, p. 277; Branch Banking for the West and South, Q. J. E. xviii, p. 97.

banks are conversions of national banks, all of which before conversion had at least $25,000 capital each. An unusually large number of banks was established in towns that already had banks of more than the minimum capitalization. The acts of May 26, 1908, and June 11, 1909, successively forbade banks of the minimum capitalization, the former in towns of more than 2,500 population, the latter in towns of more than 500 population.

The 77 banks converted during the period November 16, 1907, to September 1, 1908, had as national banks $2,525,000 capital, and as state banks $2,047,000; the shrinkage illustrating the necessity of economizing capital in undeveloped or partially developed States. Where there is so much need of buildings, plows, horses, wagons, windmills, and cattle, comparatively little can be spared for banking. Of the 77 institutions that have left the national system to become state banks, 6 have more capital than before, 33 have the same capital, and 38 have less.

The conversion of these banks has been the most dramatic feature of the guaranty episode. The national bankers valued their charters. Many had strained a point to provide the capital required in the national system in order to share in the prestige that national banks have to this time enjoyed.

Newcomers to the State, however—and newcomers are many, for Oklahoma is growing fast—instead of depositing in national banks, which they would have preferred a short time ago, have sought out the state banks. In spite of this, few banks converted until their own business, the result sometimes of years of effort, began to slip away.

Quite a few national bankers organized state banks to hold the business of those customers who wanted their deposits guaranteed. The national charters, valued from considerations of business and sentiment, were not surrendered, but the national and state banks were operated under the same management, side by side. The state banking board is no longer authorizing the organization of state banks in such cases, but can not refuse the owners of an old charter permission to resume business. The Guthrie National Bank, owning an old territorial charter, reopened the old Bank of Indian Territory August 16, 1909, in the building in which its own offices are. One Oklahoma national banker to whom the writer applied for information in March of this year, answered with a criticism of the origin of the guaranty bill. Answering another letter in May, the same banker wrote:

To begin with, you will note from the above letter head that we have surrendered our national charter and taken out a state charter here. This, of course, is because of the guaranty law. * * *

I have not changed in my ideas. I believe as firmly as ever that it is wrong—unsound economically—and that it can not last. I believe that some day the whole idea will go up in smoke, just as other foolish notions originated for their popularity have gone.

But, from a practical standpoint, it is a difficult matter for a bank in a country community, especially where the banker is practically a stranger, to stand out against. There is no question but that the farmers and many others—many of whom ought to understand better—do believe in the idea, and they deposit their funds where the guaranty will protect them. We found that in many instances customers who were under obligations to us, men who actually owed us at the time, were carrying small accounts at the state banks, and have had them send us a check on a state bank to pay interest on a note we were carrying, asking at the same time for a renewal. I have had customers tell me, with an apology, that, to satisfy, perhaps, their wife, they have opened a silent account at a

state bank, still checking on us because their treatment here had been such that they were ashamed to openly hold the account at another bank.

These and other instances induced me to make a very careful inquiry among all kinds of people, asking them in frankness their ideas, and almost to a man they favor the guaranty.

Theoretically, it is wrong; fundamentally, it is wrong; economically, it is unsound, and, therefore, wrong; but practically, in a country community, at least, it is popular, and we felt that it was best to convert.

In this connection, however, let me say that the legislature at its last session amended and modified the law, limiting the amount which may be assessed against a bank in any given year, and thus took away the most dangerous feature of the old law—the unlimited liability.

There are a number of cases of sales of national banks to men who were entire strangers to the communities in which the banks were located, but who, by converting the banks to state banks under the guaranty law, greatly increased their business.

The letter just quoted is typical. When a deposit-insurance law was passed in Kansas this year the National Bank of America, of Salina, Kans., a large and strong bank, wrote each national bank in Oklahoma for its experience in competing with guaranteed banks. The replies were so interesting that the bank published 214, practically all of them, in a pamphlet. A number of the banks had been converted into state banks before answering. One bank wrote:

For quite a while we asked nearly every farmer that came in what he thought about the guaranty law, and almost without exception every one said he would just a little bit rather have the money in a guaranteed bank than in a national bank, and we have had several good-sized deposits brought in solely because we were a state bank and they considered their deposits guaranteed.[a]

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[a] Letters from National Banks in Oklahoma upon the Guarantee Law, p. 36.

Another said:

The national bank (here) has always been the stronger bank and always had the larger deposit. In fact the "panic" left the state bank in a very dilapidated condition. The State passed the guaranty law and from that time on the state bank has gained rapidly and the national bank stood still.

We boasted of our strength and standing in the community, but we find that "strength and personality" cut no ice, and the bank with the guaranty will take your business in spite of every effort. We did not like the idea, but when we saw how things were going we surrendered our national charter and became a state bank. We are glad we did it and have checked the business that seemed slowly but surely going to the other bank.

Our experience teaches us that the guaranty is a deposit getter. It is so, especially with newcomers. It will not affect your old-line customers, but all transient business and all incoming business will line up with the guaranty.

The guaranty will cause your time-deposit account to increase, and as an advertisement there is no better theme to work on.[a]

The following are quotations from letters of national banks that did not liquidate:

The state bank has gotten some business which none of the banks here had. This is always the case with a new bank.[b]

While the state bank has increased its deposits it is from money that has been hidden away and buried that the guaranty has helped to bring from hiding.[c]

The fellow who comes from Iowa, Illinois, Nebraska, or Minnesota seems to look at the word "guaranty" as something to conjure with and I have no doubt but we lose business of that kind.[d]

Customers of the national banks would open an account with the guaranty bank with the proceeds of the sale of crops, etc., and keep on checking on the nationals until their balances were so small that they did not amount to much, and the outcome is that the deposits have decreased.[e]

I for one would make the change at the earliest possible time that I could.

[a] Letters from National Banks in Oklahoma, p. 37.
[b] Ibid., 26.
[c] Ibid., 8.
[d] Ibid., 32.
[e] Ibid., 35.

We have done well and we can not see that we have lost much business since the opening of the guaranty bank here, but there is always a dread feeling that you have that you fear that you will lose business by having such a law and you never get over it and sometimes that feeling almost runs into a fever from the moves of some of your good customers, and you have got to have a lookout all the time and two or three night watchmen on duty every night, and they have got to be friends outside and not shareholders, and that puts you under everlasting obligations to these outside fellows and, therefore, if we could call back one year I would insist on taking out a state guaranteed bank. There is too much work attached to it now; you just simply work day and night to hold your business, and while I am up at nights doing something for my trade my competitor is at home sleeping, and I don't like that. We have not changed and I don't know that we will, but if I had it to do over I would recommend a change.

Now, we are in a little town, and that makes a big difference, because the customers you have are nearly all country people and they like the word guaranty written upon everything—upon their shoes, and upon the meat, and everything else, whether it is worth anything or not they like it, and some of them will look up excuses in some other way to quit you and will magnify your faults and everything else will come up that you can not now think about.[a]

Hoping that the National Government would give us some relief, we failed to [convert].[b]

We have no intention of giving up the national here, although most of the stockholders as well as myself are Democrats, and this is one of our state's Democratic pets.[c]

If ever three or four good-sized state banks fail, there will be a run on all the others and there won't even be Democratic politicians enough in Oklahoma to collect the guaranty fund.[d]

About the only class of people that we lost were a few Democrats.[e]

In communities which are strongly Democratic some national banks have surrendered their charters, have taken out state charters, and have pushed the guaranty feature with great energy, appealing to the people upon the

[a] Letters from National Banks in Oklahoma, p. 38.
[b] Ibid., 38.
[c] Ibid., 5.
[d] Ibid., 15.
[e] Ibid., 19.

ground of supposed added safety, and also appealing to their political loyalty, the guaranty feature here being strongly a Democratic creation.[a]

In small towns there can be no question that it had affected the business of national banks, but in the larger places it has made no particular difference. Our business has grown very materially since the guaranty law has been in force, and this is largely true of all national banks in the larger places of Oklahoma.[b]

No; I would stay under the Stars and Stripes with my national bank charter.[c]

In publishing the letters, the National Bank of America, of Salina, said:

These replies so strongly substantiate our own preconceived opinion that a strong national will not suffer more than a temporary loss of business that we send out them to encourage others.[d]

This conclusion is generally correct as to the older banks and larger towns, although there are important exceptions. It is suggested by a large number of the letters, and is confirmed by examination of the statements of national banks in such towns, but it is evident that in the smaller towns the depositors now want their deposits guaranteed or insured. This was a plank in the national platform of the Democratic party in 1908. It is the fashion to say that political feeling has died out in this country, but Oklahoma, settled from older States, is in many ways typical of the Mississippi River States twenty-five years ago, and party feeling is intense. Some of the extracts just quoted show that many regard guaranty as a Democratic rather than as a financial policy. All through the campaign of 1908, in Oklahoma, stump

[a] Letters from National Banks in Oklahoma, 21.
[b] Ibid., 2.
[c] Ibid., 25.
[d] Ibid., 1.

speakers argued the guaranty of bank deposits. Comparisons were drawn, not always by politicians, between the misery that followed specific bank failures in other States, and the orderly payment depositors were promised under the Oklahoma guaranty.

Indeed, there was an Oklahoma instance. The International Bank of Coalgate, one of the banks "not in harmony with every provision of the banking laws" when the guaranty went into effect, and whose condition, although apparently somewhat improved, had not been made satisfactory to the bank commissioner, was closed May 21, 1908. Depositors were paid in full by the use of part of the guaranty fund. The bank proved to be solvent, the fund was reimbursed from the assets, and the bank was reorganized under new management. It has been alleged that it was closed to furnish a demonstration for the Democratic national convention at Denver. Be that as it may, the management had, after repeated warning, failed to correct objectionable conditions and the closing was doubtless legally warranted. There has been since the first of this year a magazine at Vinita, Okla., the "Bank Deposit Guarantee Journal," which has made frequent use of this episode. It prints a picture of a farmer and his wife before the bank, on the door of which is the notice of the bank commissioner asking depositors to please call for their money. In juxtaposition, is a mob besieging the doors of a closed bank in some other State or a laboring man heartbroken over the loss of his savings. Such pictures, and the talk they suggest (accounts in country banks are much influenced by talk) must have been effective.

The case of the Columbia Bank and Trust Company of Oklahoma City, the largest state bank in Oklahoma, which closed September 29, 1909, will be discussed in the next number of this journal.

The panic was scarcely over when the campaign of 1908 began, and, between politics and finance, the laboring men and farmers and many business men were convinced of the desirability of a fund, administered by the State, to guarantee bank deposits. This is why national banks in the small towns lost business and converted. This is why the state banks gained so largely in number and business. Whether the gains under the system will be permanent can best be discussed after considering the course of the deposit insurance movement in other States.

With State banks gaining on the national banks, and passing them in total business, there has developed some ill feeling. The national bankers have resented the implication in much of the talk and advertising that state banks are safer than theirs, and have bitterly criticised the law as worthless and dangerous. Each class of bankers has thought that the other was using improper arguments.

This feeling has partially disrupted the Oklahoma Bankers' Association. This organization has been most useful, not only in looking out for the banks in general ways, but in furnishing burglary insurance, fire insurance, and officers' bonds, through arrangement with various insurance organizations. The state bankers, feeling that after the establishment of the guaranty system their interests were no longer identical with those of the national banks, organized a "State bankers" section of the association, which met

last May at Enid, a day before the convention of the association proper. State banks may belong to the section without belonging to the parent association. The bankers' associations of the various States arouse in their members the sentiment of patriotism, for the associations have been built up by hard work, are of great use to the banking interests, and have led to the formation of life-long friendships among those engaged in their official or committee work. Many bankers of Oklahoma naturally regret the appearance of disruptive tendencies in the original association. The feeling between national and state bankers has been heightened by the course of the bank commissioner. This year Mr. A. M. Young succeeded Mr. H. H. Smock in the office. Mr. Young believes in the state banking system, and its method of deposit insurance. He has not confined himself to the mere supervision of the state banks, but has naturally interested himself to advance the state system by bringing as many banks as possible into it. For this he has been unjustly blamed.

All the States that have adopted deposit guaranty or deposit insurance have made their banking laws more strict. In the guaranty act, Oklahoma required bank directors to own at least $500 stock, free of pledge. The amount is small, but the requirement is a decided step forward. The same act also prohibited active officers from borrowing from their own banks, and provided for their removal at the instance of the commissioner for dishonesty, recklessness, or incompetency.

The later act, effective June 11, 1909, permits banks to receive individual deposits to the amount of ten times their

capital and surplus, and requires them, when deposits come to exceed that amount to increase capital or surplus, or to cease receiving deposits. The capital required by law in new banks had varied according to population. This act has changed the classification of towns and cities with the effect of considerably increasing the capital requirement.

This act changed the protection of deposits from guaranty to insurance. Not a few state bankers had been restive under the feeling that they were guarantors of all the deposits of all the other state banks. National bankers had argued, that because of this liability, state banks were not so safe as nationals. The new law, therefore, limited to 2 per cent of deposits the emergency assessments that might be levied in any one year. The regular assessment is 1 per cent of deposits the first year, and one-fourth of 1 per cent each year thereafter, until a fund equal to 5 per cent of the deposits is accumulated. The emergency assessments are to keep this fund up to 5 per cent. If fund and assessments are ever insufficient to pay depositors of failed banks, 6 per cent certificates of indebtedness are to be issued, and paid in the order of their issue.

At the time of the enactment of the first guaranty law the bank commissioner was Mr. H. H. Smock, an experienced and successful official. Last January he resigned to become vice-president of the Columbia Bank and Trust Company, of Oklahoma City, an institution to be mentioned later. He was succeeded by Mr. A. M. Young, also an able commissioner. Under both the administration of the banking department has been vigilant. The right to require the resignation of undesirable bank officers has been used. The selection of reserve agents for state banks

has been supervised. National banks that pay higher interest than Oklahoma state banks are allowed to pay are not permitted to act as reserve agents. This ruling is made partly to prevent a form of competition particularly annoying to state banks, which are legally unable to meet it. We shall meet with this situation in Kansas. Both Mr. Smock and Mr. Young have required evidence of experience, character, and ability in the proposed management before authorizing the opening of new banks. Both have refused authority for banks at points that in their opinion already had adequate facilities, following in this the practice of the Comptroller of the Currency. In one case a writ of mandamus was obtained to compel the issuance of a certificate of authority to transact business, but notwithstanding this decision against it, the commissioner's office still declines to authorize banks where in its opinion they are not needed. Very rarely can the organizers of a bank proceed successfully against official disapproval.

The Oklahoma experiment of deposit guaranty has been tried with faithful purpose to make it succeed, and to do away with the paralysis of trade and the human misery that have followed bank failures.

We leave the subject for the present, at a time when the system is undergoing the severest possible test through the closing of the largest bank in the system. Some such early shock was not altogether unexpected from the general conditions. When we resume in the next number the relation of the Oklahoma experiment and compare it with those of other States, the course of events may make clear certain conclusions we should now have to reach by long inferences.

II.[a]

The compulsory insurance of deposits in Oklahoma state banks began in February, 1908. Within a year and a half the state banks had grown marvelously in number and deposits, while the national banks had decreased in number and remained stationary in deposits. Then the Columbia Bank and Trust Company failed, with the largest deposits in Oklahoma, and this was a state bank.

Only a faint idea can here be given of the recriminations that have ensued. The national banks have been unfairly charged with having allowed the Columbia Bank and Trust Company to fail when they might have saved it, and with gloating over the failure afterwards. On the other hand, opponents of the deposit insurance system have accused state officials of indiscreet relations with the Columbia Bank and Trust Company, have accused the state banking board of favoritism in the liquidation, and Governor Haskell with preventing investigation of the causes of failure.[b] Republicans have bitterly assailed the Democratic state administration over the failure and liquidation, and the administration has fervidly answered. The governor and the attorney-general have quarreled. Litigation has been instituted by some depositors and surety companies. Just what caused the failure has not been told, but the course of events, in so far as they bear upon deposit insurance, is now reasonably clear.

The Columbia Bank and Trust Company was organized in 1905, and its career for several years was uneventful. In October, 1908, control was obtained by W. L. Norton.

[a] The Quarterly Journal of Economics, February, 1910.

[b] For the governor's explanation see p. 298, *infra*.

Mr. Norton had been an active investor in the gas and oil field of eastern Oklahoma and was supposed to be a wealthy man. Besides his oil and gas investments, and the Columbia Bank and Trust Company, he was heavily interested in many other Oklahoma banks, both state and national.

The capital of the Columbia Bank and Trust Company was $200,000. Its statement of September 23, 1908, showed deposits of $365,000, of which $110,000 was due to banks. The remarkable growth of its deposits thereafter is shown by the following figures:

September 23, 1908	$365,686.01
November 27, 1908	602,529.90
February 5, 1909	1,111,805.64
April 28, 1909	1,721,039.70
June 23, 1909	2,345,100.33
September 1, 1909	2,806,008.61

The deposits of September 1, 1909, were classified as—

Individual deposits	$1,321,929.31
State treasurer's deposit	172,383.13
Bank deposits	1,311,696 17

In less than a year, therefore, the individual deposits had increased from $255,000 to $1,300,000, and the bank deposits from $110,000 to $1,300,000; a growth astonishing even in Oklahoma.

At this time opinions about Mr. Norton differed widely. Some bankers considered him a successful business man, worth $1,000,000. Others regarded him as perhaps successful, but a plunger, and had nothing to do with his banks.

The closing of the bank was imminent some days before it occurred. A large amount of currency was rushed to the other Oklahoma City banks to save the

situation if alarm should spread. The Oklahoma City clearing-house banks offered to lend $250,000 or more in cash, if good security could be given them, and if such assistance would save the bank. This offer was declined by the bank commissioner, who took charge of the bank on the night of September 28, 1909, and opened the doors next morning to pay off the depositors as provided by the guaranty law.

Several hundred people assembled, but there was no such excitement as would attend the closing of so large a bank whose deposits were not insured. The commissioner began to pay depositors at once, and announced that, beyond question, all would be paid in full. This was a good deal to say, as there was at the time only about $400,000 in the guaranty fund, but the fact that payments were actually going on reassured most depositors.

The liabilities to be liquidated September 28, 1909, were:

Individual deposits	$1,165,747.42
Savings deposits	75,061.36
Certificates of deposit	353,184.86
Bank deposits	1,293,385.73
Cashier's checks	10,090.96
Certified checks	3,577.60
Total	[a] 2,901,047.93

The amount of cash and sight exchange is not given in the commissioner's statement. On September 1, 1909, it was shown as $1,134,981.95. Whatever it was September 28, it was far too little to pay the depositors, even with the whole of the guaranty fund added. The annual

[a] Statement of Bank Commissioner Young, October 30, 1909, to state banking board; Oklahoma Banker, vol. i, p. 136.

assessment for the fund of one-quarter of 1 per cent of deposits had recently been collected.

It will be remembered that, under the Oklahoma law, emergency assessments may be made any year up to 2 per cent of deposits. The emergency assessment in this case was, however, fixed at three-quarters of 1 per cent of the average deposits of 1908. Under this assessment, the state banks of Oklahoma had to pay $248,000.[a] Many state bankers were incensed at the failure and at the relations that were said to have existed between state officials and the bank. There was talk of resisting the assessment, but no banker cared to refuse payment at the risk of having his bank closed. Governor Haskell says, indeed, that only eleven protests were received.[b] That there was discontent is shown by the fact that the eastern group of the State Bankers' section of the Oklahoma Bankers' Association met at Tulsa about a month after the failure of the Columbia Bank and Trust Company and adopted resolutions urging changes in the guaranty law.[c]

[a] Bank Deposit Guarantee Journal, December, 1909, p. 35.

[b] The Commoner, Lincoln, Nebr., vol. ix, No. 48, p. 2.

[c] The changes proposed were:

First. That the state banking board be abolished and that the management and control of the guaranty fund be placed in the hands of the state bank commissioner.

Second. That the guaranty fund be redeposited with the banks from which it originated without interest.

Third. That the State bear the expense of maintaining and operating the guaranty fund.

Fourth. That upon the liquidation of any bank, this bank shall take over as an asset 90 per cent of the unused portion of the guaranty fund contributed by it.

The first and fourth changes might be desirable. The others would be mistakes.

oil-producing properties valued at $563,600. These will have been a most important aid to the liquidation unless the board shall be compelled to surrender them in bankruptcy proceedings that have been threatened in connection with another failure, to be mentioned later. Besides the securities received from Mr. Norton, the bank commissioner had on hand October 30 assets of the bank of the nominal value of $1,199,600.63, making total of $1,763,200.63. A shrinkage of over $600,000 could occur and still leave enough to repay the depositors, repay the guaranty fund, and repay to the banks the emergency assessment they had paid. The bank commissioner announced that the assessment would be repaid, and authorized such banks as wished to do so to carry it on their books and in their official statements as an amount "loaned to the State." The repayment of this "loan" depends on many things, and in the meantime it is an asset of problematical value. In many cases three-fourths of 1 per cent of deposits is 3 per cent of capital. To charge off the assessment would have meant to some banks passing the next semiannual dividend and would have made the guaranty law decidedly unpopular with their stockholders. While not at this time a vital matter, it would seem that it is a mistake of principle to try to make the assessment palatable by allowing it to be carried as a loan instead of ordering it charged off at once.

The liquidation of the bank proceeded rapidly. On November 13 (1909) the commissioner said in a letter to the writer that the amount due to banks had been reduced from $1,300,000 at the time of the failure to $190,000.

In an address at Sulphur, Okla., on December 6, the commissioner said that the bank still owed only 39 Oklahoma banks and that the state banking board had then on hand sufficient cash to pay all individual depositors and all holders of certificates of deposit. The unpaid certificates of deposit amounted to $27,500, and the holders of these had been satisfied with "gilt edge" paper.

Prior to the failure of the Columbia Bank and Trust Company Mr. Norton was apparently disposing of other banks he controlled. Among these was the Farmers National Bank of Tulsa, of which E. F. Blaise was president. About the middle of December the bank was closed, because, according to Mr. Blaise, of large indebtedness of Mr. Norton to the bank. Mr. Norton, according to press dispatches, denied that he owed the bank individually, and declined to say whether oil companies in which he was interested owed the bank or not.

The First State Bank of Kiefer was under allied management, and having $30,000 on deposit in the Tulsa bank, was carried down by the failure. Its deposits of $78,000 were promptly paid with the use of about $40,000 of the state guaranty fund.

Mr. Blaise asserted that unless Mr. Norton's indebtedness to the Tulsa bank was made good, bankruptcy proceedings would be instituted against Mr. Norton on the theory, doubtless, that in turning over securities to the state banking board Mr. Norton was preferring the Columbia Bank and Trust Company to other creditors in a manner open to attack under the United States bankruptcy law. The bank commissioner advised Mr. Blaise

not to institute proceedings, and he has not done so. Should he do so successfully, the $563,600 of securities turned over by Mr. Norton would have to be surrendered, and it might be impossible for the bank commissioner to reimburse the guaranty fund. Another emergency assessment on the state banks might even be necessary.

Another legal question that may involve the same possibilities has been mentioned above. It was the theory of the bank commissioner that public deposits secured by bonds executed by surety companies were excepted from the operation of the guaranty law, and were not insured by the guaranty fund. No such exception appears in the guaranty law; and surety companies that had furnished bonds covering the deposits by the land commissioner's office in the Columbia Bank sought to have the bank commissioner restrained from repaying the state guaranty fund until he had paid the land commissioner's office its deposits pro rata with payments made to other depositors. Such an order was made by the district court at Oklahoma City. The principle involved applies to all public deposits secured by surety bonds, and if the decision is sustained by the Supreme Court, the full repayment of the emergency assessment will probably have to be postponed and perhaps abandoned.

Was the insurance of deposits to blame for the failure of the largest bank in Oklahoma? A national bank, we have seen, was carried down by similar bad management, and it is an open secret that still another national bank, of which Mr. Norton was president for several years, had to be taken over last fall by a new

bank, under a new name and charter. Obviously, the Oklahoma insurance plan was not responsible for the misfortunes of these national banks. Yet it can not be relieved of all responsibility for the Oklahoma City failure. The case was of the sort familiar enough (as New York City can witness) where control of a bank was bought by a man who, whatever his capacity for other business, ought not to have engaged in banking at all. His policies were unwisely liberal. For instance, in a number of cases he offered to receive from large institution in other cities all their checks on Oklahoma points, enter credit to such institutions at par, and remit at par a week later. Now, the exchange charges of Oklahoma country banks are usually considerable, and a week is scarcely more than enough to send checks and receive payment by mail. The Columbia Bank and Trust Company was probably losing money on the proposition, besides inflating its deposit and cash accounts in a way deceptive even to itself.

This is a minor matter, however, in comparison with the loans and overdrafts. The overdrafts when the bank commissioner took charge were $200,000. The total losses incurred by the bank have been estimated by the bank commissioner at $400,000 and by the Oklahoma City Times at $800,000.

Now, a liberal or reckless bank policy frequently attracts extensive deposits, and the business of the Columbia Bank and Trust Company would have grown a good deal under Norton's management even without deposit insurance. This insurance, however, made the

growth faster and larger. Relying upon the insurance, Oklahoma banks, and outside banks too, felt safe in carrying deposit accounts with the Columbia, and in taking advantage of its liberality in collecting country checks at par. Outside of Oklahoma the bank advertised widely. The writer spent the summer vacation on Lake Ontario, and in the Rochester paper read every Sunday the advertisement of the Columbia Bank and Trust Company for deposits at 4 per cent, "deposits guaranteed by the law of Oklahoma." Such advertising drew a good deal of outside money into the Columbia. It is evident, then, that, just as critics predicted, the insurance of deposits has made it easier for an incompetent management to get deposits. The insurance system is not responsible for the failure of the Columbia Bank and Trust Company, but it is responsible for the magnitude of it.

In theoretical discussions of the subject it is often suggested that under state-administered insurance of bank deposits failures will be exceedingly rare, because, it is argued, official supervision will be more strict, and self-interest will cause the banks to keep effective watch of each other's business. There is something in these suggestions, but it would not be safe to let them determine a legislative policy. Banks know about some of each other's loans, but by no means about all. If the mutual supervision of bankers is wanted it can be exercised effectively only through examiners reporting to a committee of the bankers themselves. Such a system has been adopted of late years in several clearing-house

cities. Oklahoma City has adopted it since the failure, and one of Commissioner Young's examiners has resigned to become the Oklahoma City clearing-house examiner. It has been proposed to extend the system over whole States, as in itself a safeguard to depositors. The mutual watchfulness of bankers did not save the Columbia Bank and Trust Company, nor was state supervision under the insurance plan strict enough to save it. The bank had, indeed, been examined, the commissioner says, by two of his best deputies only about sixty days before the failure, and had been found in good condition.[a] Governor Haskell believes that the principal losses occurred within one month of the closing of the bank. This proves, if proof be needed, that no supervision can prevent the failure of bankers so unfortunate or imprudent as to make a quantity of bad investments in a short time.

It is alleged that the Columbia Bank and Trust Company was in politics, and that for this the insurance plan is to blame. The state treasurer, James Menefee, held $25,000 of the capital stock. In buying stock Mr. Menefee gave three notes of $10,000 each to the seller, who turned over at least two of them to the Columbia Bank and Trust Company. They were in the bank at the time of the failure, neither being due. One has since been paid. The state treasurer, a stockholder, and in this manner a debtor of the bank, had on deposit there when it failed $189,000, and as treasurer of the state banking board $76,000 more, secured as stated above. An appointive state officer is said to have owed the Columbia Bank and

[a] Oklahoma Banker, vol. 1, p. 166.

Trust Company about $6,000 to within a few days of the failure, when he learned of the bank's trouble and paid up. The Oklahoma City Times charged that Mr. Norton gave another banker $5,000 to "square things" with the banking authorities. The paper admitted that "things" were not "squared," and that the attorney for the state banking board made the banker turn the money into the assets of the bank. All this makes a bad mess, but there have been pet banks here and there since Andrew Jackson's time. Perhaps the Oklahoma state administration was glad to further what seemed to be a conspicuous example of the successful growth of banks under the guaranty law, and perhaps state officials got personal favors of the bank, but to blame the state guaranty system for these personal entanglements is too far-fetched. At any rate, the political objection is not fundamental. There is no reason why politics can not be as completely eliminated from the banking department of a State that insures deposits as from the same department in a State that does not.

The attorney-general recently began a grand jury investigation of the failure, and the governor stopped him. The governor was charged with playing politics again, and with stopping the proceedings to save somebody connected with the state administration. His answer was that such an investigation would interfere with the liquidation of the bank; that he wanted to collect what he could for the bank first and let the grand jury investigate the failure afterwards. This seems reasonable.

The Oklahoma experiment raises another question as to the practicability of state insurance of deposits, far

more serious than the question of politics, more serious even than the stimulus to recklessly managed banks. This is the question of the size of single risks.

On June 23, 1909, the total deposits in Oklahoma state banks were about $47,000,000. The deposits of the Columbia Bank and Trust Company at the time of failure were about $3,000,000, or 6 per cent of the total amount at risk. What would happen to a fire insurance company that ran its business so? There is of course usually more salvage after a great bank failure than after a great fire, but it takes time to realize on the salvage. The Oklahoma experiment has shown that although depositors in failed banks may be paid rapidly if the authorities can exercise discretion as to whom to pay, payment immediately upon a failure can not be promised.

It took only one failure to show this, and another great failure might have broken the Oklahoma system down. What would have happened if another large bank had failed soon after the Columbia Bank and Trust Company, and if its president had not been able to turn over valuable securities? Another assessment would have been necessary to pay depositors immediately, as provided by law. Would the banks, already smarting under an assessment that absorbed a dividend, have paid another assessment without a fight? Probably not. If they had been forced to pay, would not sympathy for the banks have led to the repeal of the law? Probably it would. The Oklahoma plan can not be a success until a guaranty fund has become very large. Until then the plan is not insurance, because there is no proper distribution of risks. It is

wagering that there will not be enough failures of big institutions to upset the guaranty plan before the necessary reserve has been accumulated. The wager may be successful. Apart from the observed tendency to stimulate improper banking, the statistics of bank failures indicate that it would be successful. There is no certainty about it, however.

Fire-insurance companies pay losses only after the amount of salvage has been ascertained or closely estimated. Could a state deposit insurance plan be operated successfully on the same principle? Depositors would probably be satisfied with negotiable certificates, bearing interest while liquidation was going on, just as the notes of Canadian banks draw interest after failure. If the guaranty were good, such certificates would doubtless be purchased or accepted as collateral by other banks.

To some extent the fact that no state-administered deposit-insurance scheme can limit the size of risks would jeopardize even a system of payment after liquidation; but such a system would have more chance of success than the scheme of paying as soon as a failure occurs. The salvage in national-bank failures averages 82 per cent of the deposits [a] and should be as much in Oklahoma. Perhaps the Oklahoma plan, modified as here suggested, might be a success. Big failures, however, are always possible anywhere, and there would be for many years the possibility of a breakdown, since no state-administered deposit-insurance system can limit the size of risks. For the present the success of the Oklahoma

[a] Report of Comptroller of the Currency, 1908, p. 86.

plan will be dependent on good luck. It takes seventeen years to accumulate the fund of 5 per cent of deposits provided for by the guaranty law, and, in view of the large deposits to be insured in single banks, it is doubtful if even a 5 per cent fund would always be adequate to the immediate payment of depositors. If further heavy losses do not occur for a number of years, the guaranty fund may grow into a sufficient reserve. Until then the plan will be an experiment only. The objection of the size of particular risks is inseparable from state-administered deposit insurance, and can be overcome only by engaging private enterprise in the deposit-insurance business.

After the levy of the emergency assessment there was a good deal of talk of the conversion of state banks into national banks to escape future experiences of the kind. The office of the Comptroller of the Currency informs the writer that it is not practicable to announce how many state banks have applied for authority to convert. The bank commissioner of Oklahoma says the number is two, and two reorganizations or conversions are all that the writer has noticed in the press dispatches, one at Oklahoma City and one at Enid, the latter being a reconversion of a state bank that had formerly been a national bank. Five national banks were converted into state institutions between September 1 and November 16, 1909. The state banks continue popular, as would be expected after the apparent success of the insurance plan exhibited in the liquidation of $3,000,000 of deposits. The following table shows that the decrease in the number

of national banks and the increase in the number of state banks continue.

STATE BANKS.

	June 23, 1909.	September 1, 1909.	November 16, 1909.
Number	631	646	662
Individual deposits	$42,722,927	$44,777,259	$49,775,433
Total deposits	$47,147,062	(a)	$54,963,266

NATIONAL BANKS.

Number	230	225	220
Individual deposits	$38,111,948	$37,726,265	$41,617,228
Total deposits	$44,450,759	$43,878,444	$50,666,687

a Not ascertained.

There were early predictions of disaster on account of the organization of small banks in such large numbers, but these banks seem to be getting on. A western country bank can pay expenses if it can obtain $20,000 of deposits, and in a growing country the future of such a bank is reasonably sure. If some banks have been opened where not required, they will consolidate with others or will liquidate. Their passing will not cause disturbance. Nor has there been any general development of rascality. It may be that here and there is a banker whose antecedents are bad. It is now more difficult than ever for a man of bad record to get into the banking business in Oklahoma. Perhaps there are such in a few Oklahoma banks already; Oklahoma is a new country, and it would be strange if an occasional rascal did not come in. The writer speaks from personal knowledge, however, in stating that Oklahoma bankers, taken by and large, are competent, and men of character.

The failure of one or two banks does not disprove the theory of state-administered deposit insurance, nor does their successful liquidation prove it. The study of the Oklahoma experiment, however, gives us some conclusions of vital importance:

I. There is need of greater assurance of the safety of deposits than is afforded by mere inspection and supervision. Given assurance which it considers adequate, the public will make greater use of banks, and more banks will be established. We shall consider later how widely this conclusion is valid.

II. The State can not undertake to pay deposits in full as soon as a bank closes.

III. The insurance of bank deposits assists the growth of bad banks as well as good.

IV. Under a State deposit insurance system the risk that will be assumed on a single bank can not be limited.

These results will be useful in the consideration of the subject as a whole, after the experiments in other States have been examined.

KANSAS.

Oklahoma politics reflect the originality and venturesomeness of the pioneer American, but in the serious consideration of bank deposit guaranty, Oklahoma was long anticipated by Kansas. The writer heard the governor of Kansas, Major Morrill, a Republican and a banker, say in an address before the convention of the Kansas Bankers' Association, as early as 1895, that he believed the Government should guarantee the deposits in banks; though in later years Major Morrill opposed the plan.

Mr. John W. Breidenthal, bank commissioner of Kansas, in the fourth biennial report of his department, September 1, 1898, recommended the enactment of a deposit guaranty law. Mr. Breidenthal, a Populist, was an efficient commissioner. In the following November, Governor Leedy, also a Populist, was defeated for reelection. In order that deposit guaranty legislation might be had, the governor called a special session of the legislature, believing that the measure could be put through before the inauguration of his Republican successor. The bill provided that banks might either pay to the guaranty fund assessments of one-eighth of 1 per cent of their deposits, or place 5 per cent of their deposits with the state treasurer, the income of the 5 per cent to go to the guaranty fund. Prominent bankers were at Topeka opposing the bill. It passed the senate, and, after a hot parliamentary struggle in the house, it received the votes of 59 members, a majority of those present, but four short of a constitutional majority. The four votes lacking could not be obtained, and the bill failed. Mr. Breidenthal says that four legislators were bribed to vote against it.

Nearly ten years later Governor Hoch, a Republican, called another special session for the same purpose. The deposit guaranty proposal was ably supported, and apparently sure of adoption, but, in the last few days of the session, the opposition succeeded in sidetracking guaranty by adopting a bill authorizing the formation of a company to insure deposits. Governor Hoch vetoed the bill as a worthless makeshift, and because, as he said, he would rather delay guaranty than have it on the wrong basis.

In the summer of 1908, however, the Democrats of Kansas, following the lead of the national convention, put into their platform a deposit guaranty plank. Many of the "progressives" in the Republican party—they are also known as "boss busters"—believed in bank guaranty and believed that it would be popular in Kansas. It was, therefore, advocated in the Republican platform also. The Republicans won the election, and the legislature met in January, 1909, with both parties pledged to the guaranty of bank deposits. A system for the purpose, really an insurance system, was provided after a strenuous session, by the act of March 6, 1909, which went into effect July 1.

The Kansas law differs markedly from the law of Oklahoma. Perhaps the two most vigorous criticisms of deposit guaranty have been that it compels good banks to pay the depositors of failed banks, and that incompetent or dishonest bankers will draw away the business of conservative bankers by paying extravagant interest on deposits. Moved by these criticisms the Kansas legislators made it optional with the banks whether to insure their deposits or not, and provided that no bank paying more than 3 per cent interest on any class of deposits could insure any deposits whatever. To discourage the organization of new banks for the purpose of getting away the deposits of established banks, it was provided that, before participating in the guaranty plan, a bank must have an unimpaired surplus equal to 10 per cent of its capital, and must have been in business one year. National and private banks and trust companies that reorganize as state banks may, however, participate immediately. National

banks, indeed, may participate as such, so far as the Kansas law goes; but are forbidden by the federal department from doing so. It is provided also that if no one of the existing banks in a town participates in the plan within six months after July 1, 1909 (when the law took effect), a new bank may then, if otherwise qualified, come under the plan at once.

The deposits insured are noninterest-bearing accounts, savings accounts of not over $100 each, and time certificates of deposits payable from six months to one year after date, and drawing not over 3 per cent interest. This excludes the deposits of other banks, for these deposits are almost always on running accounts at from 2 to 3 per cent interest. The assessments for the guaranty fund are levied not on the amount of deposits, but on the amount of deposits eligible to guaranty, less the capital and surplus of the bank. This introduces a sort of classification of risks—the only attempt at such classification in the guaranty law of any State. The larger a bank's capital and surplus in proportion to its deposits, the less will be its assessment or premium, and to this extent the Kansas law encourages the accumulation of capital and surplus. The assessments are to be made annually until the guaranty fund reaches $500,000. If the fund is depleted, as many as five assessments may be called for in one year. To guarantee the payment of the assessments, $500 for each $100,000 of deposits must be deposited with the state treasurer in cash or in certain bonds.

The Kansas law requires the bank commissioner to examine rigidly each bank applying for permission to participate in the guaranty plan, just as the Oklahoma

commissioner did of his own motion. As participation is voluntary, so banks may withdraw from the guaranty by giving notice to the commissioner. They must, however, pay all assessments that may be made on account of banks that have already failed and banks that fail within the next six months.

The assessments in the Kansas plan are small because no attempt is to be made to pay depositors in full on the closing of a bank. The assets, including the liability of the stockholders, are first to be realized upon. Only the loss remaining after the liquidation of the assets will be paid out of the depositors' guaranty fund. In the meantime, certificates bearing 6 per cent will have been issued to the depositors, and it is expected that these can be sold or pledged to other banks, so that general business will not suffer as it frequently suffers when funds are tied up in insolvent banks. As in Oklahoma, so in Kansas, the legislation for the insurance of bank deposits was accompanied by legislation providing additional regulations for banks.[a]

[a] Some of these are:

A majority of the directors must be residents of the county in which the bank is located or of some adjoining county.

A stockholder to be eligible to the position of director or cashier must own at least 5 shares of stock, which shall not be hypothecated.

The bank commissioner may refuse to consider as a part of the legal reserve of any bank balances due to the bank from any other bank, any of the stockholders of which are stockholders in such depositing bank.

Any officer of any state bank who may be found by the bank commissioner to be dishonest, reckless, or incompetent, shall be removed from office by the directors of the bank on the written order of the bank commissioner.

It is unlawful for any state bank, whether its deposits are insured or not, to accept deposits continuously for six months in excess of ten times its paid up capital and surplus.—Act of March 5, 1909.

Once the deposit guaranty act was passed, it was undoubtedly the desire of most of the national bankers of Kansas to participate in the system. The maximum assessment could in no year exceed one-fourth of 1 per cent of deposits, and the near-by example of Oklahoma seemed convincing as to the effect of deposit insurance upon the banks that provided it and the banks that did not. But the Comptroller of the Currency, Mr. Murray, held that national banks could not lawfully participate in the guaranty of deposits under the Kansas law. Through the Secretary of the Treasury, he asked for the opinion of Attorney-General Wickersham whether national banks had the right to participate in the assessments and benefits of the bank depositors' guaranty fund of the State of Kansas upon the same terms and conditions as applied to state banks. Governor Stubbs, Bank Commissioner Dolley, and Attorney-General Jackson, of Kansas, saw Mr. Wickersham in Washington March 31, 1909, and argued in the affirmative; but Mr. Wickersham's opinion, rendered April 6, 1909, was in the negative. He shared the opinion of his predecessor, Mr. Bonaparte, expressed in the Oklahoma case, that national banks have not the power to insure their depositors against loss. Mr. Wickersham said further that even had national banks such power, they had not the power to submit themselves, as required by the Kansas statute, to examinations and other forms of control by the banking department of the State of Kansas. "Only an act of Congress," he said, "can confer such powers upon national banks."[a]

[a] Report of Comptroller of the Currency, 1909, p. 94.

Senator Curtis and Representative Madison of Kansas introduced bills in Congress to grant national banks authority to participate in deposit guaranty systems, but no action was taken.

The national banks of Kansas had already held a meeting in Topeka March 26 to consider what their course should be. They decided to await the return of the governor and his advisers from Washington, and agreed that if the final decision should be that national banks could not lawfully participate in the guaranty of deposits, the national banks would then organize a currency asociation under the Aldrich-Vreeland act, believing that this action would assure depositors that there would always be a sufficiency of currency. It was further agreed that they would organize a company to insure bank deposits, both in national and in state banks.

Though the currency association has not been organized, the organization of the Kansas Bank Deposit Guaranty and Surety Company is well under way. Of course banks can not, as such, subscribe for stock in an insurance company, yet it was desired that the banks should hold the stock. The difficulty was obviated in this way: Each bank that wished to aid in the organization of the company had its shareholders appoint some one, usually the president of the bank, as trustee to hold the insurance stock in behalf of the shareholders. They authorized the payment to the trustee of a dividend of 2½ per cent of the capital and surplus of the bank, to be used to pay for stock in the insurance company. It will be recalled that the Attorney-General of the United States is of the opinion that national banks can not use their funds to pay premiums for

the insurance of their deposits.[a] The premiums due the Kansas company are, however, to be paid, not out of the funds of the bank insured, but out of special dividends duly declared, and, after such declaration, paid as premiums by the authority, previously given, of the shareholders individually. Dividends are not funds of the bank, but the property of the shareholders, and there is nothing to prevent the shareholders from using their own property to purchase insurance for the depositors. The premium rates have been fixed at 50 cents for each $1,000 of deposits up to the amount of the capital and surplus of the insuring bank, and at $1 for each $1,000 of deposits in excess of capital and surplus—that is, one-twentieth and one-tenth of 1 per cent, respectively, the former being the initial rate in the state system. This is analogous to the credit the state guaranty scheme allows for capital and surplus.

At the meeting of national bankers in Topeka, March 26, 1909, Mr. Dolley, the bank commissioner, was present and was not at all unfavorable to the plan of a deposit insurance company. He stated that he would be impartial and would leave the state banker to decide for himself whether to go into the guaranty system provided by the State or to take out insurance in the proposed company. Later Mr. Dolley changed his mind, and in speaking of the insurance company and the guaranty fund, at the annual convention of the Kansas Bankers' Association at Wichita, he said: "Every state banker should know where his

[a] Under a later opinion the same result may be accomplished by insuring assets in a certain way. Report of Comptroller of the Currency, 1909, p. 94.

home is."[a] In fact, there was fear that the state bankers would prefer to take out insurance instead of participating in the guaranty system provided by law, participation in Kansas being voluntary, and not permitted to banks that pay over 3 per cent interest, even on time deposits. Now just as the Oklahoma limit of 4 per cent is below the economic rate in parts of that State, so 3 per cent is too low in a large part of Kansas, and not only national but state banks advertised that they would insure their deposits in the new company and continue to pay 4 per cent interest. This competition might keep many banks from participating in the guaranty scheme and might draw away some of the depositors of the banks in the scheme. So serious was this possibility considered that there was much talk of an extra session of the legislature to amend the law so that state banks could pay 4 per cent; but the attorney-general of Kansas concluded that the insurance department of the State could forbid the company to insure the deposits of banks that paid more than guaranteed banks were allowed to pay.

The authorized capital of the Kansas Bank Deposit Guaranty and Surety Company is $500,000. Of this $346,550 has been subscribed and $257,850 paid in. It was even announced that the company would begin to write insurance. Meanwhile, however, legal complications have arisen. A Nebraska law for state insurance of bank deposits had been held unconstitutional by the United States circuit court. The Kansas law was attacked on smilar grounds. Among the lawyers engaged to conduct the case against it were Senator Waggener, a

[a] Proceedings Kansas Bankers' Association, 1909, p. 50.

Democrat, attorney for the Missouri Pacific Railway, and ex-Senator Long, a Republican, who had been defeated for reelection in 1909 by the "boss busters." The guaranty of deposits is a "boss buster" asset, and the "old crowd" would not be sorry to have it declared unconstitutional. On December 24, 1909, the circuit court granted a temporary injunction against the enforcement of the act. The case was to be appealed to the circuit court of appeals.[a] But it is now stated that a special session of the state legislature will be called to amend the law, such an extra session being expected to cost less than sustained legal proceedings. A suit to test the validity of the law under the state constitution is also pending in the Kansas supreme court. Hence the legal situation and the mutual outcome are still involved in uncertainty, and the Deposit Guaranty Company is not yet ready to do business.[b]

No attempt can be made here to enter on the legal question. But all this litigation proves one thing of significance. The fact that it seemed worth while to raise a fund and engage in litigation proves that even bankers opposed to the principle of insurance of deposits through a fund administered by the State realize that such insurance makes a powerful appeal to the people, and will affect the distribution of deposits.

Many new state banks were organized in Kansas in 1909. Banks organized after March 5 at points where

[a] After this appeal was heard, the injunction was dissolved and the operation of the law resumed. 179 Fed. 461. The case is now in the United States Supreme Court, with the Oklahoma and Nebraska cases.

[b] The company later commenced operations, and has now (December, 1910) been writing deposit insurance policies for some time.

there are banks already can not have their deposits insured for six months or a year, but in some towns that had banks, as well as in some that had not, the organization of new banks was somewhat hastened by the idea that deposits would come more easily once a bank was under guaranty. Eighty-seven state banks were organized from September 1, 1908, to December 17, 1909, 38 of them in towns that had no banks before. Six national banks, of which one was a reorganization, were organized from October 31, 1908, to December 23, 1909. All of these were in towns that had banks already. About 10 national banks have been converted into state banks.[a]

As in Oklahoma, so in Kansas, the establishment of a system of deposit insurance has led some of the state bankers to the conclusion that their interests are no longer identical with those of the national banks. They have, therefore, organized the Kansas State Bankers' Association, which is wholly independent of the Kansas Bankers' Association, and, like the older organization, will procure fidelity bonds and burglary insurance for its members.

By the middle of September, 1909, 451 banks had applied to have their deposits guaranteed, and 229 had paid their assessments, deposited their bonds, and were under guaranty. Some of the applications had been made by banks that did not intend to go into the system at once, but applied in order that they might receive the necessary examinations and be ready to go in without delay should it prove advisable later to do so. On September 28, 1909, Bank Commissioner Dolley stated

[a] See p. 352 for items from recent statements of Kansas banks.

to the press that "the banks that have applied for participation have a combined capital stock of $7,350,000 and a combined surplus of $2,140,000. The combined capital stock of banks that have not applied is $5,930,000 and these banks have a surplus fund of $1,680,000." The commissioner concluded that "the stronger state banks of Kansas believe in the guaranty law and have availed themselves of opportunities to at once come under its provisions." On the same date, according to a letter from the commissioner, 300 banks were actually in the guaranty system. By the end of October, 365 were in. The amount in the guaranty fund December 17 was $17,000, besides $276,876 of bonds and cash deposited to guarantee payment of future assessments. This would indicate about $40,000,000 of individual deposits in the guaranteed banks. The Kansas banks are splendid risks now. Their customers are prosperous. Alfalfa and cattle have made a great change in Kansas agriculture since the days when wheat and corn were almost the only dependence of many farmers. Mining and manufacturing flourish also in many places. The State is rich. It is to be remembered, too, that the Kansas fund will be used only to pay losses finally ascertained at the winding up of failed banks, and that four additional assessments equal to the one now paid in could be levied within a year. Nevertheless, a fund of $17,000 is a small one for starting an insurance business with $40,000,000 of risks.

As the law went into effect on July 1, 1909, and as banks have been going into the guaranty system ever since, the bank commissioner has given out no statement of the effect of the guaranty law on the deposits of the banks

that have accepted its provisions. The effect is probably slight. There are some stories that money has come out of hiding and gone into the banks; and the advertisement of the guaranty has increased the deposits of some banks. The time has been short and the multifarious litigation confusing. The scheme has not been so thoroughly advertised by talk and print as in Oklahoma. Indeed, the smallness of the fund has been criticised with effect, and there is no popular interest in the subject. The guaranty of deposits has had as yet no real test in Kansas. None the less, such small results as have been observed bear out the evident expectation of the bankers who organized the insurance company, and of those who instituted court proceedings, that deposits, if adequately insured, would grow.

NEBRASKA.

In Nebraska also deposit guaranty is not a new proposal. In every session of the legislature for nearly twenty years there have been one or more bills for the guaranty of bank deposits. In the days of the Populist party, one serious attempt to pass a guaranty bill was defeated partly through the efforts of Mr. Shallenberger, who, curiously enough, was long after, in 1908, elected governor by the Democrats on a deposit guaranty platform. In that year the Democratic campaigners had made much of deposit guaranty on the stump. The Republicans had not met them on the issue; in fact, their nominee for governor, ex-Governor Sheldon, had rather favored the proposal. It is said that a majority of the members of the legislature were never convinced of the wisdom of guaranty legislation, and that, notwithstanding campaign pledges, there might have been no such

legislation but for the personal influence of Mr. Bryan, who insisted that promises be redeemed.

Deposit guaranty, or insurance, was provided by the act of March 25, 1909. Its chief provisions in comparison with those of the laws of other States have already been indicated.[a] Participation in the guaranty is compulsory for all State banking institutions. No provision is made for national banks. Four assessments, each amounting to one-quarter of 1 per cent of average deposits, are to be made by the state banking board between July 1, 1909 (when the law was to take effect), and January 1, 1911. Thereafter, semiannual payments of one-twentieth of 1 per cent of deposits are to be made. Special assessments not exceeding 1 per cent in one year may be levied to restore the fund if depleted. The assessments are not to be paid over to the state banking board, but each bank is to credit the amount assessed against it to the state banking board, payable on demand. This is an arrangement that might easily lead to trouble. Insurance premiums, for that is what these assessments are, should be paid over to the insurer, not held by the insured, subject to all sorts of claims and processes if the insured happens to think his insurance is proving too expensive.

All deposits are insured, and the deposits of every failed bank are to be paid in full as soon as the deficiency in the cash turned over to the receiver is determined. The state banking board will obtain funds to meet the deficiency by drawing checks against the assessment accounts standing to their credit in all the state banks.

[a] See the table opposite page 264.

The act made the regulation of banking more stringent in several particulars. The minimum capital of banks thereafter organized was increased. The qualifications of directors were made in some respects more exacting than are the qualifications of the directors of national banks. Most important regulation of all, the act limited banking to corporations, and forbade individuals and firms to carry on the business.

At the time of the passage of the act there was some activity in organizing state banks, but the secretary of the state banking board, in a letter to the writer, expresses the opinion that few banks have been organized for the purpose of taking advantage of the guaranty law. No national banks converted for the purpose. "Several state banks, however," he says, "have nationalized in order to get out from under the new law, and several more would have done so had the law gone into effect."

The law is not yet in effect and may never be. Many state banks and two private banks obtained from the United States circuit court an injunction prohibiting the state authorities from putting the law in operation. The same questions were raised as in the Oklahoma case, whether an assessment for the deposit guaranty fund would be a mere police regulation of the conditions under which the business of banking should be carried on, and so within the power of the State to levy, or whether it would be depriving sound banks of their property without process of law, and turning that property over to the depositors in unsound banks. There was raised also the question whether the State could constitutionally legislate its 13 private banks out of existence. The court

expressly declined to rule upon either of these points separately, but held that, taken together, they established the invalidity of the act.[a] The case has been appealed to the United States Supreme Court. Meantime, neither the additional regulations of banking provided for by the act nor its guaranty provisions are in effect.

Although the experiment of deposit guaranty has thus not yet begun in Nebraska, one can see, from the politics and the litigation, as in Kansas and Oklahoma, that bankers naturally oppose deposit guaranty and deny its necessity, and yet that very many of the people are expected to place their deposits under it if given a chance. Bankers, to do them justice, fight the scheme not only because they expect it to move some deposits from long-established banks to new institutions, but because they think such removal will tend to encourage unwisely liberal, even reckless, methods, to the ultimate loss of the community, especially the banks. This possibility can, however, best be discussed after our review of legislation is completed.

SOUTH DAKOTA.

Though manufacturing and the wholesale trades are progressing rapidly in the States whose recent banking history we are considering, the interests of the group

[a] The act not only attempts to exclude individuals from engaging in the banking business, unless they do so through the agency of a corporation, but also attempts to impose upon them, as a condition to their engaging in that business even in that form, a duty to make good the obligations of all other bankers in the State to their depositors. * * * We are of the opinion that this can not be done consistently with the fourteenth amendment to the National Constitution. (First State Bank of Holbein et al. *v.* Shallenberger, Governor; Journal of American Bankers' Association, vol. ii, p. 187.)

remain predominantly agricultural or pastoral. This is particularly the case with South Dakota. The people had plenty of wheat, flax, oats, corn, cattle, horses, sheep, and hogs for sale, and the panic of 1907 was soon forgotten. Only one bank fåiled in the State in three years preceding the deposit insurance legislation of 1909, and that bank paid 100 cents on the dollar. Probably there would have been no attempt at deposit insurance legislation had not the Democratic state convention followed the national convention by putting a guaranty plank into the state platform. Not to be outdone by this vote catcher, the Republicans also indorsed the guaranty plan, so that it was in the platforms of both parties, just as it was in Kansas.

The Republicans, it will be remembered, carried the State; and their advocacy of the new plan became cool. With the scheme in the platforms of both parties, however, there seemed to be no way out, and it became a question, apparently, of how little could be consistently done.[a] The provisions of the scheme adopted in the act of March 9, 1909, have been outlined. Like the Kansas plan, the South Dakota plan is voluntary. But while a single Kansas bank could take the state-administered deposit insurance, and by paying its initial assessment establish a guaranty fund, it would take one hundred banks to set the South Dakota plan in operation. One hundred banks, or more, could organize "the State Association of Incorporated Banks." The membership fee would be from $100

[a] One banker said in a letter to the writer: "The law which they passed is considerable of an abortion and the intention in passing the same was to make it so abortive that it would neither hold water under the Supreme Court, or that no bank would take it up."

to $170 each, according to capital. The annual premium would be one-tenth of 1 per cent of the deposits, except public deposits otherwise secured. In case of need, special assessments might be levied, not exceeding in any year four-tenths of 1 per cent of deposits. Out of the fund thus established the depositors of failed banks would be paid. If the fund were insufficient at the time of a bank failure, the subsequent accumulations of the fund for the year covered by the last premium paid by the insolvent bank would be paid to depositors pro rata. Depositors would apparently lose what was unpaid at the expiration of the premium year.

It was probably not expected by many that an association would be formed under the act. Perhaps half a dozen banks have written the public examiner asking if any movement were under way to organize an association, but there has been no movement, and the matter has dropped.

The legislature, however, passed an excellent general banking law. The act of 1903, amended in 1907, was a comparatively short law, not so definite or particular as is now deemed advisable in banking legislation. The act of 1909 increases the minimum capital of a state bank to $10,000 or more, according to population. Directors, while still eligible if owning five shares, must own these free of pledge. Directors, or a committee of stockholders, must examine their banks twice a year and report to the public examiner what they find. The public examiner is allowed two additional examiners on his force. These and other provisions will strengthen the banks and the public examiner's department.

The South Dakota banks have been given the opportunity to effect insurance for the benefit of their depositors, but have not done so because not required by law. For two reasons, this is different from the course of hundreds of Kansas bankers under a voluntary plan. First, the Kansas plan is more flexible, being available to individual banks. Second, the Kansas bankers were induced to avail themselves of the plan by the apparent early success of the neighboring Oklahoma plan, similar but compulsory. The recommendation of the Kansas bank commissioner to the banks under his supervision also contributed to the result observed in Kansas.

It is not likely that the South Dakota plan will ever be used at all.

TEXAS.

As in Kansas, Nebraska, and South Dakota, the first distinct impetus to deposit insurance legislation in Texas was furnished by the Democratic national platform. The loyalty of Texas to this party is proverbial, and it was almost as a matter of course that the state convention adopted a similar plank. It is doubtful, however, if even party regularity would have been a sufficient force to pass a guaranty bill without the strongly exerted influence of the governor and of Bank Commissioner Love, both firm believers in the wisdom of the plan. They were reenforced by Mr. Bryan himself, who, while on a visit to the State, visited the legislature and advocated the guaranty of bank deposits in a speech from the speaker's stand. The bankers in the cities were, as a rule, opposed, but many of the country bankers

favored the guaranty scheme as a preventive of panic and a builder of deposits. The failure of the Western Bank and Trust Company of Dallas under discreditable circumstances was comparatively recent, and had left a pronounced sentiment in favor of some measure that would in the future afford depositors reasonable assurance of safety.

Notwithstanding politics, official pressure, and a favoring sentiment on the part of some banks and much of the public, the regular session of the thirty-first legislature adjourned March 12, 1909, without action on the subject. The governor issued a call March 13 for a special session to convene the same day, and gave as one of the purposes of the session that of enacting legislation to guarantee bank deposits. This "called session," however, adjourned April 11, without passing a guaranty bill. The governor then called still another session, to meet the next day. This second "called session" gave Texas a guaranty law. It went into effect August 9, 1909, and under its provisions the guaranty plan went into operation January 1, 1910.

Under this law any bank has nominally an option whether to protect its depositors by contributing to a guaranty fund or by filing annually with the commissioner of insurance or banking, "on behalf of its depositors," "a bond, policy of insurance, or other guaranty of indemnity in an amount equal to the amount of its capital stock," or if a private bank, "in an amount to be fixed by the commissioner of insurance," but in no case less than one-half the average deposits of the preceding twelve months. Incorporated banks must file

additional security when their deposits exceed six times their capital and surplus.[a]

Now, a policy of insurance or a bond procured from some surety company for the benefit of the depositors would cost at present rates one-half of 1 per cent of the capital of an incorporated bank, while the annual assessments, under the guaranty fund plan, will be more than that, but, except in emergencies, only one-fourth of 1 per cent of the deposits. If resort is had to individual sureties, there must be at least three of them. Most bankers would hesitate to ask customers, even directors, to sign a bond equal to the whole capital of the bank so to be guaranteed, and most customers or directors would hesitate to sign even if the request were made. Moreover, a personal bond, made, as it would be, by the active management or by its close friends, would reassure few depositors in uneasy times and would attract few new depositors in good times. If the management turned out bad, the bond would not often be much better, and experience proves that even solvent sureties would usually seek in every way to avoid payment. As a matter of fact, only 42 banks had chosen the bond security plan on October 1, 1909, by which date all the banks operating under the Texas banking law were required to elect which form of security they would provide for their depositors.

There are provisions in the Texas law permitting national banks to avail themselves either of the guaranty fund plan or of the bond security plan. Under the opinions of

[a] Sections 15 and 22 of bank guaranty law effective August 9, 1909.

Attorney-General Bonaparte and Attorney-General Wickersham, on the Oklahoma and Kansas laws, the former plan is not open to national banks, but doubtless any national bank could file a bond to secure its depositors, provided it did not, as a bank, pay anything for such bond.

The outline of the Texas guaranty fund plan is like that of Oklahoma, with interesting variations. It applies to incorporated banks. The initial assessment is 1 per cent of average deposits for the year ending November 1, 1909. The regular annual assessment is one-fourth of 1 per cent of average deposits, but in emergency the total assessments for any year may run to 2 per cent of deposits. Twenty-five per cent of these assessments is to be paid by the banks to the state banking board, and will be deposited by the board with the state treasurer. Each bank will credit on its books 75 per cent of each assessment upon it to the state banking board, subject to check. This retention of part of the assessments follows the law of Nebraska, where all the assessments were to be paid in the first instance by this bookkeeping device. The scheme is a defect in the laws of both these States. Some Oklahoma banks seriously contemplated resisting the payment of the drafts of the state banking board for the recent emergency assessment, and many more banks were exceedingly restive. In Texas and Nebraska the banks would hate to see the guaranty fund drawn upon, even though carried on a separate ledger page. Checks by the banking boards might prove a precarious resource. It would be better to collect all assessments at once and keep the fund in the state treasury or in marketable securities.

The maximum amount of the Texas guaranty fund is $2,000,000. After the fund reaches that figure, the only further assessments will be to restore it when temporarily reduced. As in Oklahoma, it is provided that depositors shall be paid in full on the closing of a bank. This, as Oklahoma experience shows, can not be promised safely.

The act of 1909 provided additional general regulations of banking, such as have been adopted in all the States in which there has been deposit insurance legislation, and partly because of it. If bankers are responsible for each other, they desire that all shall be required to conform to adequate regulations. Probably the most interesting and important of the new Texas regulations is the attempt to establish a relation between deposits and capital. We have seen that banks under the bond security plan must file additional security if deposits exceed six times capital and surplus. It is further provided that capital must be increased as deposits increase. If, for instance, the deposits of a bank of $10,000 capital average for a year more than five times its capital and surplus, the bank must increase its capital by 25 per cent. So banks with capital up to $20,000, $40,000, $75,000, $100,000, and over $100,000 must increase capital by 25 per cent when deposits exceed six, seven, eight, nine, and ten times their respective present capitals. Other changes are in provisions for examinations quarterly instead of annually, and limiting the liabilities a director may incur to his bank.

The total number of elections of the guaranty-fund plan to December 29, 1909, was 493, and of the bond-security plan (as stated above) only 42. Existing banks

were required to make their elections not later than October 1, 1909. The failure in an adjacent State of the Columbia Bank and Trust Company of Oklahoma City, at the close of September, seems not to have caused the Texas bankers to fear that in choosing the guaranty-fund system they had chosen the wrong plan.

One indication of the attractiveness of guaranty deserves mention. The Texas constitution of 1876 had forbidden the incorporation of banks.[a] A great many private banks grew up, and there were some existing charters that the constitution could not abrogate. Many of these gave exceedingly wide powers, like the charters under which banking was sometimes conducted in connection with various other business before the civil war. The Western Bank and Trust Company of Dallas, for instance, was a cotton factor. These charters have been much used of late years, and parent institutions have established numerous branches. After a change in the constitution a general banking law was adopted in 1905, and many banks were incorporated. The bank-guaranty law of 1909 has now provided that by discontinuing branches institutions operating under special charters may avail themselves of either the bond-security plan or the guaranty-fund plan. A remarkable instance of the effect of the guaranty law appeared in the case of the Continental Bank and Trust Company of Fort Worth, which has discontinued its 30 branches and has reorganized

[a] No corporate body shall hereafter be created, renewed, or extended with banking or discounting privilege.—Art. xvi, sec. 16, Const. of Texas, 1876.

them as separate banks, all of them electing the guaranty-fund plan.

No fewer than 89 state banks were organized between June 20 and December 29, 1909, with a total capital of $3,167,500. Eight were conversions of national banks. Though this activity in bank organization must be ascribed chiefly to the present rapid development of a wonderful State, the fact that banks can attract deposits more rapidly under a system of deposit guaranty has undoubtedly in some cases made possible the establishment of banking facilities sooner than they would otherwise have been provided. This consideration must not be exaggerated, however. The organization of 89 banks in so few months is striking, but not wholly exceptional. There was an increase of 86 in the number of Texas state banks and trust companies between the May statements of 1907 and 1908, long before the guaranty legislation.

On page 352 are some figures from recent Texas bank statements.

As the guaranty of deposits in Texas banks began only on the first of this year, there are no comparisons to be made. So far the Texas law has not been attacked in court. As the largest Commonwealth in the United States, it is a wonderfully interesting field for a financial experiment, and the result will be important.

COLORADO AND MISSOURI.

The bank guaranty scheme was proposed in the legislatures of many other States but failed of adoption. Of these cases the legislative experiences of Colorado and Missouri are, perhaps, the most interesting.

In Colorado the Democrats, following the example of the national convention held in Denver, put a guaranty plank into the state platform, and, being successful in the election of 1908, brought the guaranty matter forward in January, 1909, early in the session of the legislature. The matter was fought over until April. The guaranty bill was a carefully drawn measure, providing for the accumulation of a fund of 1 per cent of the deposits. Of this fund two-fifths was to be paid in at once, and one-fifth each year thereafter. In case the fund should be impaired, special assessments to replenish it might be made, not exceeding 1 per cent of the deposits in any one year. The interest to be allowed on deposits was limited to 4 per cent.

It is only of recent years that Colorado has had an adequate banking law, and there was no bank commissioner until 1908. Some good sized bank failures had occurred. This fact reenforced the political situation, and apparently strengthened the chances of the bill.

The Colorado Bankers' Association actively opposed the bill, on the familiar ground that it would force good banks to pay the losses of the bad. The Democratic legislators, however, felt obliged by the party platform to pass some kind of a guaranty bill, and there was prepared and introduced what became known as the individual guaranty bill. This provided that each bank must set aside each year 1 per cent of its deposits until it had so accumulated a fund equal to 10 per cent of its deposits. This fund was to be invested in bonds or warrants approved by the bank commissioner, and

the bonds and warrants were to be delivered to the state treasurer. In case of the insolvency of the bank, the securities were to be turned over to the receiver for the pro rata benefit of unsecured depositors. The fund could not be used to restore impaired capital. If the capital became impaired, but the banks did not become insolvent, the impairment would have to be made up by assessment on the stockholders; the so-called guaranty fund remaining intact for the benefit of depositors in case of insolvency.

The Colorado bankers felt that in this unique and interesting bill they had hit upon a good solution of the guaranty problem, by providing for the establishment of a large fund that would stand as a buffer between the depositor and the losses his bank might make on its investments. The objection to the plan would seem to be that it would require banks to invest largely in long-time securities. Colorado is industrially a comparatively new State, and has need of active working business capital. It would seem that its banks should for the present confine their investments to commercial and agricultural channels.

The individual guaranty bill was strongly urged, and the legislative situation grew into a deadlock. The legislature adjourned in April, without passing either the mutual guaranty bill or the individual guaranty bill.

When the Missouri legislature convened in January, 1909, the Democrats were in control of the senate, while the Republicans were in control of the house. Throughout the session there was much playing of politics. The

governor recently elected was Herbert S. Hadley, the first Republican governor Missouri has had in a generation. A banking law adopted by the previous legislature went into effect January 15, 1909. This law created the office of bank commissioner. Until then, the state banks and trust companies of Missouri had been supervised by the secretary of state. This office had been filled under the previous administration by John E. Swanger, a Republican, and Governor Hadley appointed Mr. Swanger to be the first bank commissioner, in view of his ability and experience. Mr. Swanger desired to have the banking laws of the State again revised, and caused to be introduced both in the senate and the house a bill for the purpose. Prior to the introduction of this bank revision bill, Senator Lane had introduced in the state senate a guaranty bill along the general lines of the first Oklahoma measure. His bill, however, provided for a smaller fund—only one-fourth of 1 per cent of the deposits, this to be kept up by annual assessments upon which no limit was placed. It was attached in the senate to the bank revision bill, which, therefore, passed the senate and went to the house embodying a bank guaranty scheme. In the meantime, the house had passed Mr. Swanger's revision bill, and sent it to the senate. The senate attached Senator Lane's bill to the house bill also, and sent it to the house for concurrence in the deposit-guaranty amendment. The house neither passed the senate bill, however, nor concurred in the senate's amendments to the house bill, and, as the senate would not recede from its position, the desired revision of the banking law failed.

The banking department of the State of Missouri is supported by the examination fees of the banks, and an important part of the revision bill had been a very proper and necessary increase in these fees. On account of the failure of the revision law because of the legislative deadlock of the senate and the house over the deposit guaranty question, Commissioner Swanger was confronted by the necessity of curtailing the work of his department or of raising the money outside the state treasury. Some of the larger banks of the state are, at the commissioner's suggestion, carrying the salary warrants issued to the commissioner's force, and it is expected that the next legislature will appropriate enough money to cover the deficiency.

The experiences of Missouri and Colorado with the deposit guaranty bills illustrate the intense feeling that has attended the working out of the question in the West.

DEPOSIT INSURANCE BY PRIVATE CORPORATIONS.

It has long been possible for a depositor to procure insurance of his deposit, or for a bank to procure insurance on behalf of a particular customer (usually a public officer depositing public funds) covering in a specified amount. The rates have been ordinarily one-fourth of 1 per cent per annum. Recently some of the large companies have doubled the rate. Many Oklahoma national bankers have believed that, unless Congress should authorize them to participate in the state guaranty plan, they would have to insure their deposits in order to compete with the state banks.[a] It has been suggested that the leading surety

[a] This they can do under some policy forms. Opinion of Attorney-General Wickersham in Report of Comptroller of the Currency, 1909, p. 94.

companies might combine to issue a joint policy. Seventeen of the companies have a total capitalization of about $35,000,000, and their joint policy would be good.[a]

The organization of an insurance company in Kansas by national bankers and some state bankers has been recounted in our study of the Kansas situation. Attempts have been made to organize other deposit insurance companies.

Some of the existing companies doubt whether it is possible to write deposit insurance at all generally. If so, should the companies guarantee the repayment of all a bank's deposits, whatever they might be, or should the policies be for definite amounts? Should a policy be paid on the closing of a bank, or within a certain time thereafter, or only when liquidation had been completed? These problems are as yet unsolved.

Of course, depositors would at the outset have more confidence in a state guaranty fund than in the insurance policy of any company. Even if the state system broke down, the State would see that all losses were ultimately paid, as did New York after the collapse of the safety fund system.[b] If the insurance companies were solvent

[a] New York Herald, May 28, 1909.

[b] It is fortunate that the Monetary Commission is to include in its publications a study of the New York experiment. [The Safety Fund Banking System in New York State from 1829 to 1866, by Dr. Robert E. Chaddock.] The only study available has been that of John Jay Knox, in his History of Banking. Mr. Knox says that the safety fund system failed because it covered deposits as well as notes, but the facts he sets out are not sufficient to test his conclusion. Evidently politics and fraudulent note issues played an important part.

and carefully administered, however, the public would soon repose confidence in them, as it does in fire insurance companies.

The companies may be expected to have a favorable loss experience. They will employ good bank examiners and select risks with care. It has been suggested that only the weaker banks would apply for insurance, but this is disproved by the experience of Kansas. Some of the strongest banks in that State were participating in the guaranty plan at the time its continuance was enjoined, although the fund, as we have seen, was too small to appear reassuring to depositors. It may fairly be expected that strong banks would take out insurance in a company organized with large paid-up capital by good business men.

The loss experience can be helped in another way. If an insurance company learns that one of its risks is in difficulty, it can often, after ascertaining the exact situation, obtain additional security from the stockholders, and put into the bank enough cash to enable it to continue business. The stockholders would almost always rather give security than let the bank close and pay the assessments that usually follow. The insurance companies would rather put in cash by way of loan than let the bank close and pay the policies. It is the intention of the organizers to take this course wherever possible.

One objection to state-administered deposit insurance has been the apparent necessity of a large degree of state control of the operation of banks. This control is exercised by limiting deposits and limiting interest payments;

the objections to it will be more fully considered later. These limitations reach few of the possible elements of bad management. Insurance companies could reach many others by granting or withholding insurance in specific cases. If deposit insurance has commercial utility—and we have seen that in some places it has—private corporations can furnish it satisfactorily. The restraint thus exercised by the companies would not have the injurious effects of excessive state regulations.

GENERAL ARGUMENTS AND CONCLUSIONS.

In the experiences of the States that in the last two years have adopted or seriously considered deposit-insurance legislation we have found strong conflicting tendencies at work. In Oklahoma the time has been too short for definite conclusions and in other States the experiment of deposit insurance has either not begun or hostile litigation has obscured the results. Let us, therefore, take up the general arguments for and against the insurance of bank deposits and consider them in the light of such facts as have been developed in the foregoing study. In the considerable volume of recent discussion on this subject[a] the following are stated to be the chief purposes of deposit insurance:

1. The prevention of the individual distress that always follows a bank failure. The statistics that prove how

[a]Government Insurance of Bank Deposits, edited by Rollo L. Lyman (The H. W. Wilson Company, Minneapolis, 1908), contains excerpts from essays on both sides of the question. See also Guaranty of National Bank Deposits, by James B. Forgan, of Chicago; Guaranty of Bank Deposits, by Prof. J. Laurence Laughlin; addresses by Charles H. Huttig, Festus J. Wade, and H. P. Hilliard, of St. Louis; Andrew J. Frame, of Waukesha, Ill.; and editorials in the Commoner, Lincoln, Nebr.

comparatively rare bank failures are and how infinitesimal the ultimate loss is, are not valid as a measure of the blighted ambition and the "wreck of happiness" that follow the closing of banks.

2. Another and different purpose is to prevent the embarrassment in other lines of business that has heretofore followed the closing of banks. Deposit insurance will accomplish this purpose, its advocates say, either by paying deposits immediately or by furnishing depositors with interest-bearing certificates for the amount of their claims, the ultimate payment of these certificates being insured. Other bankers will, it is said, undoubtedly buy the certificates or accept them as collateral for loans to business men. Assuming the insurance to be good, the writer believes that other banks would take this course. Even without insurance, banks now frequently take the business of depositors who have money tied up in failed banks and lend on assignments of claims for the tied-up funds.

3. Still another purpose is the prevention of financial panics by assuring depositors of the safety of their funds. It is argued that, being so assured, depositors will not run upon the banks. It can not be doubted that the insurance of deposits would now and then prevent a bank run. But such runs as have anything to do with general financial panics are symptoms and not causes. The causes are usually to be found in overexpansion of trade, or in untenable speculative situations, and neither of these causes can be reached by deposit insurance. The most

that such insurance could do would be to mitigate the effects of a panic by assuring depositors of the ultimate safety of their deposits. Yet it would mitigate them. Though much money would be drawn out of banks by depositors who felt that they could not afford to have their funds tied up even temporarily, a great deal would be left in the banks by depositors who would otherwise draw out their deposits in cash. In 1907 the largest bank in the Southwest closed after a practically continuous run of more than a month. So far from losing all its deposits in those long and desperate weeks, the bank closed with half its deposits still on its books. All depositors can not be classed together. Some are so frightened by the least rumor that nothing can satisfy them but the withdrawal of their deposits in money. Others are not frightened at all. Between these two classes is the great bulk of depositors, more or less uneasy, but reluctant to aggravate the situation by joining a run. Bankers who have observed depositors in like circumstances agree with the writer in saying that most of this great middle class would let their deposits stay if assured of ultimate safety.

4. Deposit insurance has been advocated to prevent the closing of sound banks by runs. Sound banks, however, are not closed by runs. Now and then a bank is injured by a senseless run, but if it is thoroughly sound it does not close.

5. Deposit insurance, if otherwise successful, will, of course, make it profitable to establish additional banks.

6. Economically, the most important purpose of deposit insurance is to increase the use of banks by the general

public. The amount of money hoarded in the United States is enormous. The well-known investment of savings in post-office money orders and the heavy remittances by immigrants to foreign banks indicate that large numbers of people fear to deposit in American banks. Again, every country banker can tell of farms paid for in his office with money damp from long burial in cellars or under refuse heaps. Every city newspaper has frequent stories of some washwoman being robbed of the savings of years, or some mechanic whose wife forgetfully lights a fire in the old stove and burns the hidden money. Nor is it only laboring people and the ignorant who distrust all banks. The safe deposit vaults hold the money of clerks, real estate owners, and even business men by the millions and millions. Money to the amount of $1,660,000,000 in the United States is neither in the Treasury nor in the banks.[a] Much of it is in circulation, but a vast amount of it is hoarded. How much one can not even guess.

Here the Oklahoma experiment is in point. Given deposit insurance in which the people have confidence, there will be less hoarding of actual cash, and people will use banks more. The effect will be cumulative, for as people who are now ignorant of banking customs become familiar with such customs their resort to banks for all kinds of financial business will rapidly increase, to the social good.

Let us now consider the objections.

1. The chief objections urged against the insurance of bank deposits are that it is unnecessary and that there is only a small demand for it. The small aggregate losses to depositors in national banks since the establishment of

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[a] Report of the Comptroller of the Currency, 1909, p. 62.

a national banking system in 1863 are referred to in support of this argument. The average loss is variously calculated. Mr. James B. Forgan, of Chicago, has calculated it to be one twenty-sixth of 1 per cent per annum, but the writer can arrive at this result only by omitting from the calculation the losses on receiverships not finally closed, and these losses will be considerable.[a] The Comptroller of the Currency has calculated the loss to be about one-seventeenth of 1 per cent, but while taking the total known and estimated losses on all classes of deposits he figured his percentage on individual deposits only, not including the very considerable item of deposits by banks.[b] The writer, taking these omitted elements into consideration, estimates the average annual loss on deposits in national banks to be one twenty-second of 1 per cent.

Now, this loss, while infinitesimal, deters a great many people from depositing in banks, for the reason that people do not know what institutions will fail. It is suggested, of course, that such a fear is unreasonable. "Let the people pick out good banks to do business with," say the opponents of deposit insurance. But in too many cases the people can not pick good banks. Not only in the country, but in the city, a large number of people have not and can not get the necessary information to enable them to determine whether a given bank is good or not. A few banks stand out in their communities preeminent for strength and conservatism, but these can not do all the business, and every now and then one of these very institutions fails. To say nothing of laborers and small tradesmen, even the great business

[a] Guaranty of National Bank Deposits, by James B. Forgan, p. 12.
[b] Report of the Comptroller of the Currency, 1908, p. 86.

man usually knows only by general reputation whether a bank is good or not. He can not know of all of the bank's investments. Although in touch with the affairs of the community, he is dependent on current gossip for any details he may chance to learn of those transactions that impair a bank's solvency.

The closing of any bank is a surprise to the very directors. Few of its depositors can have had any reasonable chance to learn anything about it. Whom could they have asked? The directors? They were deceived themselves. The big business men of the city? If they had their misgivings they would not have communicated them. Did they inquire as to the general reputation of the management, the answer would be almost invariably "reputation all right." The crash of failure comes upon the depositor almost always without his having had personal warning or any practical opportunity to obtain it. Though there may be little active demand for bank deposit insurance (it is a novel matter anyway), it is not true that there is no need for such insurance. The advisability of giving the holder of a bank's notes protection additional to that afforded by the particular bank has long been recognized. Until comparatively recent times the liabilities of banks were chiefly notes. Now the liabilities are chiefly book credits—deposits. It may be time that depositors should cease to be dependent upon the fortunes of a single bank in a single place.

2. Another question raised has already been considered; whether deposit insurance will prevent financial panics. The conclusion seems inevitable that while panics can not be prevented, good deposit insurance would mitigate some of the effects.

3. Another series of objections is usually stated by way of *reductio ad absurdum*. The existence of good deposit insurance being assumed, it is argued that the insurance itself would lead to impossible conditions, and that the insurance system would, therefore, break down.

The simplest form of this reasoning is that deposit insurance would make deposits in a poorly managed bank as safe as those in a well-managed bank. But this is not quite true, if we are correct in believing that deposit insurance should not be paid until after the liquidation of the assets of the insolvent bank. With such a provision in laws or policies there would still remain a sufficient incentive to depositors to seek banks operated by careful and prudent men.

Again, it has been offered as an argument against the Oklahoma plan, that if the qualities of honesty, care, and skill would not make one bank safer and therefore more attractive for depositors than another, so enabling the possessor of these qualities to excel in banking; then honest, careful, and skillful men would go into some other business, leaving the field to men of weaker character and inferior ability. This, it is alleged, would result in such deterioration of bank management as to destroy the deposit insurance system, if not the banking system itself. But would men of integrity and strong character avoid the field of banking if the deposits of their competitors were insured? Is there no difference between banks except in safety? The incentive to good management in banking is not the mere desire to avoid failure. If the banker manages ill, his bank will pass out of existence to his financial loss, whether its depositors

are insured or not. Deposit insurance is not stockholders' insurance. Stockholders must lose all their money before depositors collect any insurance at all. With insurance in force, stockholders would need and have just as careful officers as now. The careful, skillful, and honest would still succeed, the reckless, incompetent, and criminal would fail.

It is argued, however, that liberality in loans or in interest rates would then be the chief inducement to depositors. It is supposed that much loss would result, and that, if the unwise banking methods predicted did not lead to wholesale bank failures, they would, at least, result in a great waste of capital and a corresponding economic loss to the country. This argument has its force; there would be some waste. There has been waste in Oklahoma, some of it attributable to deposit insurance. All insurance causes waste. But good insurance prevents more than it causes. On the whole, fires are not more but less because of insurance. It is reasonable to hope, although impossible to prophesy, that deposit insurance, by stimulating good banks and increasing their number, will lead to a higher average of management, and to less waste than at present. Failure and waste under any proper deposit insurance system, will continue to be sporadic only and probably not more frequent.

As deposits are created largely by loans, it has been suggested that loans might be made fraudulently, and payment of resulting deposits be required out of the insurance fund, while the loans could not be collected. The answer to this is that practically the same opportunity exists now. It can just as well be supposed that

crooks would start an unguaranteed bank now, attract some deposits, purposely make some bad loans, credit the loans up as deposits, and pay the fraudulent depositors with the funds of the good depositors. It is not necessary to introduce the guaranty of bank deposits to provide bankers of criminal tendencies with opportunities to defraud. It is probably true that, once in the business, such bankers could get more deposits under a guaranty or insurance system than they could otherwise get. But where there are guaranty laws, it is probably harder for such people to get into the banking business now than before the laws were passed; and their opportunities are not sufficiently greater now than before to make it more likely that the opportunities for crime will be availed of.

It is said that insurance of bank deposits will lead to undue expansion, that the affairs of existing banks will be overextended, and too many new ones organized. It is hard to see how insurance could overexpand existing banks, except by increasing their deposits or by inducing reckless management. As to bad management, we have seen reason to hope that, on the average, it is not more probable with insurance than without. The increase of deposits surely can not be deplored. At times it does lead to overexpansion of credits, but this is a difficulty inherent in the credit system. As the use of credit increases, because of deposit insurance or any other factor, each expansion of credit is apt to be larger than the one before. We can not on this account retrace our steps and reject the improvement of credit devices. It is possible that too many new banks will be organized on the adoption of a deposit insurance system.

An effort to obtain part of the business of established banks has been suspected in some of the new Oklahoma and Kansas organizations. In some cases the new competition will be beneficial to the public, in others not. In every case, the organizers have supposed that the total deposits of their communities would be more than before. On the economic frontier, at least, it is highly desirable that additional banks be established, because under the American system many remote communities, where the capital necessary to establish independent banks is lacking, have gone without banking facilities altogether. The overexpansion feared is not of a character to lead to great alarm. If the new banks attract sufficient business, they will succeed. If they do not, they will gradually go out of business, or consolidate with other institutions. There is no reason to fear that they will be the cause of a speculative mania or a general financial crash.

It is said that depositors being by hypothesis satisfied as to the safety of all banks, there would be no reason for any bank to build up a surplus, and the result would be the distribution of all profits, to the weakening of the banking system and its component parts. There is force in the argument. It seems to the writer, however, that surplus is created more to secure stockholders against possible impairment of capital and suspension of dividends than to reassure the depositors. The latter motive, of course, is present, and is a great element of safety. The office of the surplus as a buffer is, however, an important one, and is frequently the chief motive to its accumulation. With a good surplus a bank can sustain, without alarming its stockholders or cutting off their dividends, a

loss that, with no surplus or a small one, might not only stop dividends but call for an assessment to repair capital.

Why stop at insuring the deposits of banks? "Why not tax all the manufacturers and merchants to pay the creditors of the unsuccessful or delinquent among them?"[a] But why not regulate the business of manufacturers and merchants as minutely as banks are regulated? Why not limit their borrowings? Why not require them to publish statements, sell only on certain terms and in certain quantities, and submit to inquisitorial visitation? The principle of protecting the creditors of banks is settled. The new method of doing so may be open to criticism, but the principle of safeguarding depositors is not itself open to debate.

4. As a further general argument, stress is laid on the unfairness of taxing sound banks to pay the losses of depositors of unsound banks. Though this consideration would have to give way to the general good if deposit insurance were otherwise desirable, the argument requires examination. The depositors of good banks do not need the insurance. At first thought it seems grossly unjust not only to raise weaker competitors to the same level of safety, but to put the expense of doing this upon the strong banks themselves. This, however, is an argument against all insurance. The honest and careful property owners, through their insurance premiums, pay the fire losses of the careless and incendiary. The strong and healthy pay the death losses of the weak. To make the argument valid, we must go farther, and establish that the deposit insurance will cause so much additional loss as to overbalance the benefits to be derived from it;

[a] Forgan, loc. cit., p. 29.

and this has not been established. In fact, we have concluded that no deposit insurance could be even supposed to make all banks entirely equal in safety. And would deposit insurance be unfair to the strong banks? They would get their returns. The amount of hoarding in this country is enormous. Adequate deposit insurance will increase the deposits of even the most highly esteemed and strongest banks, and so bring them additional revenue.

5. The next general argument is that such additional revenue would not be nearly enough to sustain the burden of insurance. The average annual loss to depositors in national banks is less than one-twentieth of one per cent, but the insurance premiums or taxes for the guaranty fund would have to be more. The loss experience might increase under the admitted tendency to unwise management, although this tendency would be in part counteracted by the more frequent examinations and stricter laws that accompany deposit insurance legislation. To the losses would have to be added the expense of management. We have seen that the surety companies have been insuring deposits in a limited way for one-quarter or one-half of 1 per cent. Mr. Forgan estimates the present rate of profit on bank deposits, after allowing 5 per cent for capital invested, to be three-fourths of 1 per cent.[a] To insure all of a bank's deposits at one-fourth of 1 per cent would take too much of this profit. But if the cost could be reduced to one-tenth of 1 per cent, it is not so clear that the expense would be too great. Disregarding the profits that would come from additional deposits made on account of insurance, the annual profit on

[a] Forgan, loc. cit., p. 15.

deposits would be reduced from 0.75 per cent to 0.65 per cent. This could be afforded. Or, to calculate the effect on the ratio of profits to capital and surplus, we may note that the profits of the national banks for the year ended July 1, 1909, were 8.72 per cent of capital and surplus, not much above recent averages. An amount equal to one-tenth of 1 per cent of the deposits could be deducted and still leave the profits well above 8 per cent of capital and surplus. The premium or tax of one-tenth of 1 per cent is used here more as illustration than estimate. Deposit insurance would bring into play so many tendencies that previous loss experience might prove wholly unreliable.

Averages, however, do not tell the whole effect as to loss-sharing, any more than the averages of loss to depositors tell the whole effect of bank failures. While the averages seemingly indicate that going banks could afford to assume all the losses of depositors in closed banks, the cost to some of the largest, strongest, and most useful banks in the country would be too much. A tax of one-tenth of 1 per cent would take $200,000 out of a bank that had $200,000,000 deposits; and it is the large banks in large cities that would derive the least benefit from deposit insurance. Even though they would gain in deposits, the resulting additional revenue would probably not pay the cost.

A related objection is that the cost of insurance falls upon the bank, and not upon the beneficiary, the depositor; and, as deposits can no more be insured free than can houses, it has been argued that the whole scheme of insurance paid for by the banks is unsound. A great deal of other insurance, however, is paid for by the parties against whose defaults the insurance is written. The

employee in many cases pays for the bond that guarantees his own fidelity. The contractor pays for the bond that insures the completion of his work free of mechanics' and material liens. Even banks already buy insurance covering the deposits of public funds. Perhaps the cost of the employee's bond is made up in his pay, perhaps the premium on the contract bond has already been added to the contractor's bid, and perhaps the cost of deposit insurance is eventually paid by the depositor. The fact that the bank pays it is not an objection nor even a novelty.

Of course, deposit insurance premiums must be paid out of the earnings from the deposits, but it is a question whether this means that the cost would fall upon the depositors. Many depositors receive no interest on their deposits. Most of the five thousand millions of individual deposits in national banks bear no interest. The trust companies have shown that in many cases interest on individual deposits can be afforded. While depositors whose accounts are at interest might find the rate of interest reduced if the accounts were insured, the banks could afford themselves to pay moderate insurance on an enormous total of interest-free accounts.

The insurance of interest-free accounts is not impracticable from the point of view of its effect upon the profits of banks, but may be too expensive for certain banks if compulsory. Like many another reform or improvement of method, it will be well to let deposit insurance introduce itself gradually. This it will do if it can demonstrate its commercial utility. At present its utility in some localities seems likely to exceed its cost, in other localities not. Until the results of current experiments are clear, each

bank should be allowed to determine for itself whether or not to procure insurance for its depositors.

6. A sixth objection to deposit insurance lies against the state-administered kind only, because private insurance corporations could obviate it. This is the objection to the large single risks that must be insured. The objection would apply with considerable force even to compulsory insurance administered from Washington covering all the national banks. The State or nation can not insure the little banks and decline the big ones. This consideration has been discussed in our study of the Oklahoma situation, and the objection still seems valid. As stated before, if state-administered insurance can be conducted with few or no great losses for a number of years, so that time can be had to accumulate a great reserve, the plan might succeed. But success would be a matter of luck.

7. The next objection arises in part from the attempt to control the size of risks. It is, in another form, the objection already mentioned, that state-administered deposit insurance involves too great interference with the conduct of banking. Let the reader refer again to the comparative table of legislation. It will be seen that several of the States are limiting the amount of deposits a bank can receive in proportion to its capital and surplus. Now capital and surplus are the buffers between the investments of a bank and its depositors, and it is commendable that legislators should desire capital and surplus to be adequate. It is submitted, however, that this is not a proper matter for legislative regulation. The great function of commercial banking is to aid commerce and industry by the device of credit, and if a given bank can safely

do this to the extent of twenty times its capital and surplus, which it sometimes can (though not often), why so much the better. So much more capital is left free to other uses.

Again, interest on deposits is limited by the new legislation, for fear some banks will overexpand by paying too much interest, will fail, and involve others in their loss. Some bankers of the older generation do not believe in interest on deposits at all. American banking has been haphazard in this regard. The $500 account has had the same treatment as one of $10,000. Gradually, however, it is becoming recognized that some accounts are worth more than the stationery and bookkeeping furnished, and bankers must be left free to say what deposits are worth and what they will pay. Unwisdom in paying too much brings its own penalty. A private insurance corporation can say to a bank in eastern Kansas, "In view of the richness of your community and the low rates obtainable on loans, it is unwise for you to pay 4 per cent on your deposits, and if you do we can not insure them." At the same time the company may be glad to see one of its risks in western Kansas increasing its business by paying 4 per cent. This is the beneficial "higgling of the market," while the fixing of the price of deposits by legislation would impair enterprise and interfere in some degree with economic development.

The other social objection, that it is not wise to exempt individuals from the consequences of their mistakes, has no weight, because it is in so many cases not applicable to the selection of a depositary. The presumption is always in favor of the bank under consideration because the State or nation is allowing it to run. General reputa-

tion is usually the only guide for the intending depositor. He must deposit somewhere, or ought to, and no social purpose is served by putting upon him the consequences of a mistake he had no means of avoiding.

The immediate future of deposit insurance depends much upon the result of pending litigation. If the guaranty laws are upheld, the state guaranty systems will be used for a time. It may be that in spite of the large single risks, and the tendency to unwise liberality in bank management, the state guaranty funds will grow large enough to assure the success of the experiments. In that case some national banks will probably begin to insure their depositors. If the laws are held unconstitutional, there will probably be a good deal of insurance of deposits in private companies on account of banks in Oklahoma and perhaps elsewhere. The deposits of Oklahoma banks increased so rapidly under state insurance that they are not likely to discontinue insurance altogether if they can find companies to write it.

The laws will all need amendment. The Oklahoma fund is not accumulated rapidly enough and the Kansas fund is too small. Kansas does not insure the deposits made by banks, although these should be insured as much as any, because they are the reserve of the depositing banks, and much depends on such deposits. Oklahoma must abandon the effort to pay depositors as soon as a bank is closed. This is not the place, however, for proposals of legislative changes.

In the end, we come back to the question of the need of the insurance. Hoarding and distrust of banks are found to some extent everywhere in this country. Deposit

insurance would call out most of the hoards and remove most of the distrust. Oklahomans are typical Americans, and they swelled the deposits of their banks as soon as the deposits were insured; while large amounts of deposits came from Americans in other States.

This has been a remarkable economic experiment, projected in time of panic, taken up as a national political issue, and carried on under the fire of hostile litigation. If successful, it would serve high social purposes, and the objections to the state control involved might be waived if they did not interfere with success, and if there were no better way to achieve the great purposes in view. Politics can be eliminated. Compulsory state-administered insurance of deposits has not been proved impracticable, although the resulting tendency to uncareful management, the expense and perhaps unfairness to sound banks, and the impossibility of selecting the risks must cause misgiving. These objections almost all disappear in the consideration of insurance by private corporations. Such insurance may prove the ultimate solution of the problem.

It must not be thought, however, that the introduction of private insurance, as distinguished from that administered by the State, will be rapid. It will be slow. The benefit to many banks would be small, and others will take it up most gradually. Bankers are the most conservative of men. They know that their banks are good, and many will feel insulted when solicited to insure their depositors against loss. But if the limited observations here set down are valid over a wide area—and the writer believes they are—it will gradually and beneficially become the custom to insure bank deposits.

Certain items in bank statements of November 16, 1909.[a]

STATE BANKS.

	Oklahoma.[b]	Kansas.[c]	Texas.	South Dakota.[b]	Nebraska.[b]
Number of banks	662	[d] 819	[e] 502	474	662
Capital	$10,767,800	$15,810,800	$16,114,000	$6,316,275	$12,027,240
Surplus	881,340	4,957,936	1,475,960	972,942	2,115,977
Due to banks	4,537,080	97,217,510	6,541,580	2,590,551	73,283,626
Individual deposits	49,775,433		43,328,797	49,557,408	
Due from banks	20,659,289	36,528,127	18,051,023	14,497,871	15,075,686
Cash in bank	4,607,348		5,324,673	2,722,583	4,452,424

NATIONAL BANKS.

	Oklahoma.	Kansas.	Texas.	South Dakota.	Nebraska.
Number of banks	220	206	519	95	220
Capital	$10,070,000	$11,992,500	$42,393,300	$3,740,000	$14,395,000
Surplus	2,674,142	4,887,573	19,551,996	747,450	5,600,960
Due to banks	8,263,308	16,691,222	38,744,096	5,295,688	28,948,348
Individual deposits	41,617,229	67,094,340	164,618,078	28,631,498	82,784,953
United States deposits	765,831	651,519	1,137,333	545,459	1,044,760
Due from banks	16,657,396	21,179,768	59,693,840	8,238,287	25,551,358
Cash in bank	4,968,818	7,780,867	22,314,188	2,747,068	10,615,642

[a] The banking departments of the different States do not compile their reports in quite the same way, and the amounts given above as "due from banks" and as "individual deposits" do not in all cases include quite the same items. The differences, however, are immaterial.

[b] All banks other than national.

[c] Statement of September 29, 1909.

[d] Includes 812 state banks, 4 private banks, and 3 trust companies.

[e] Includes 450 state banks and 52 trust companies.

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